CHAPTER 40

AN ACT revising and updating the corporation business tax and concerning filing fees for certain returns and designated the Business Tax Reform Act, amending and supplementing P.L.1945, c.162, amending P.L.1947, c.50, P.L.1993, c.170, P.L.1993, c.173, P.L.1997, c.350, and N.J.S.54A:8-6, and repealing various parts of the statutory law.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. Section 2 of P.L.1945, c.162 (C.54:10A-2) is amended to read as follows:

C.54:10A-2 Payment of annual franchise tax.

2. Every domestic or foreign corporation which is not hereinafter exempted shall pay an annual franchise tax for each year, as hereinafter provided, for the privilege of having or exercising its corporate franchise in this State, or for the privilege of deriving receipts from sources within this State, or for the privilege of engaging in contacts within this State, or for the privilege of doing business, employing or owning capital or property, or maintaining an office, in this State. And such franchise tax shall be in lieu of all other State, county or local taxation upon or measured by intangible personal property used in business by corporations liable to taxation under this act.

A foreign corporation shall not be deemed to be deriving receipts, engaging in contacts, doing business, employing or owning capital or property in the State, for the purposes of this act, by reason of (1) the maintenance of cash balances with banks or trust companies in this State, or (2) the ownership of shares of stock or securities in this State if such shares or securities are pledged as collateral security, or deposited with one or more banks or trust companies or brokers who are members of a recognized security exchange, in safekeeping or custody accounts, or (3) the taking of any action by any such bank or trust company or broker, which is incidental to the rendering of safekeeping or custodian service to such corporation.

A taxpayer's exercise of its franchise in this State is subject to taxation in this State if the taxpayer's business activity in this State is sufficient to give this State jurisdiction to impose the tax under the Constitution and statutes of the United States.

2. Section 3 of P.L.1945, c.162 (C.54:10A-3) is amended to read as follows:

C.54:10A-3 Corporations exempt.

3. The following corporations shall be exempt from the tax imposed by this act:

(a) Corporations subject to a tax assessed upon the basis of gross receipts, other than the alternative minimum assessment determined pursuant to section 7 of P.L.2002, c.40 (C.54:10A-5a), and corporations subject to a tax assessed upon the basis of insurance premiums collected;

(b) Corporations which operate regular route autobus service within this State under operating authority conferred pursuant to R.S.48:4-3, provided, however, that such corporations shall not be exempt from the tax on net income imposed by section 5(c) of P.L.1945, c.162 (C.54:10A-5);

(c) Railroad, canal corporations, production credit associations organized under the Farm Credit Act of 1933, or agricultural cooperative associations incorporated or domesticated under or subject to chapter 13 of Title 4 of the Revised Statutes and exempt under Subtitle A, Chapter 1F, Part IV, Section 521 of the federal Internal Revenue Code (26 U.S.C. s.521);

(d) Cemetery corporations not conducted for pecuniary profit or any private shareholder or individual;

(e) Nonprofit corporations, associations or organizations established, organized or chartered, without capital stock, under the provisions of Title 15, 16 or 17 of the Revised Statutes, Title 15A of the New Jersey Statutes or under a special charter or under any similar general or special law of this or any other state, and not conducted for pecuniary profit of any private shareholders or individual;

(f) Sewerage and water corporations subject to a tax under the provisions of P.L.1940, c.5 (C.54:30A-49 et seq.) or any statute or law imposing a similar tax or taxes;

(g) Nonstock corporations organized under the laws of this State or of any other state of the United States to provide mutual ownership housing under federal law by tenants, provided, however, that the exemption hereunder shall continue only so long as the corporations remain

subject to rules and regulations of the Federal Housing Authority and the Commissioner of the Federal Housing Authority holds membership certificates in the corporations and the corporate property is encumbered by a mortgage deed or deed of trust insured under the National Housing Act (48 Stat.1246) as amended by subsequent Acts of Congress. In order to be exempted under this subsection, corporations shall annually file a report on or before August 15 with the commissioner, in the form required by the commissioner, to claim such exemption, and shall pay a filing fee of $25.00;

(h) Corporations not for profit organized under any law of this State where the primary purpose thereof is to provide for its shareholders or members housing in a retirement community as the same is defined under the provisions of the "Retirement Community Full Disclosure Act," P.L.1969, c.215 (C.45:22A-1 et seq.);

(i) Corporations which are licensed as insurance companies under the laws of another state, including corporations which are surplus lines insurers declared eligible by the Commissioner of Banking and Insurance pursuant to section 11 of P.L.1960, c.32 (C.17:22-6.45) to insure risks within this State; and

(j) (1) Municipal electric corporations that were in existence as of January 1, 1995 provided that all of their income is from sales, exchanges or deliveries of electricity derived from customers using electricity within their municipal boundaries; and (2) Municipal electric utilities that were in existence as of January 1, 1995 provided that all of their income is from sales, exchanges or deliveries of electricity derived from customers using electricity within their franchise area existing as of January 1, 1995. If a municipal electric corporation derives income from sales, exchanges or deliveries of electricity from customers using the electricity outside its municipal boundaries, such municipal electric corporation shall be subject to the tax imposed by this act on all income. If a municipal electric utility derives income from sales, exchanges or deliveries of electricity from customers using electricity outside its franchise area existing as of January 1, 1995, such municipal electric utility shall be subject to the tax imposed by the act on all income.

3. Section 4 of P.L. 1945, c.162 (C.54:10A-4) is amended to read as follows:

C.54:10A-4 Definitions.

For the purposes of this act, unless the context requires a different meaning:

(a) "Commissioner" or "director" shall mean the Director of the Division of Taxation of the State Department of the Treasury.

(b) "Allocation factor" shall mean the proportionate part of a taxpayer's net worth or entire net income used to determine a measure of its tax under this act.

(c) "Corporation" shall mean any corporation, joint-stock company or association and any business conducted by a trustee or trustees wherein interest or ownership is evidenced by a certificate of interest or ownership or similar written instrument, any other entity classified as a corporation for federal income tax purposes, and any state or federally chartered building and loan association or savings and loan association.

(d) "Net worth" shall mean the aggregate of the values disclosed by the books of the corporation for (1) issued and outstanding capital stock, (2) paid-in or capital surplus, (3) earned surplus and undivided profits, and (4) surplus reserves which can reasonably be expected to accrue to holders or owners of equitable shares, not including reasonable valuation reserves, such as reserves for depreciation or obsolescence or depletion. Notwithstanding the foregoing, net worth shall not include any deduction for the amount of the excess depreciation described in paragraph (2)(F) of subsection (k) of this section. The foregoing aggregate of values shall be reduced by 50% of the amount disclosed by the books of the corporation for investment in the capital stock of one or more subsidiaries, which investment is defined as ownership (1) of at least 80% of the total combined voting power of all classes of stock of the subsidiary entitled to vote and (2) of at least 80% of the total number of shares of all other classes of stock except nonvoting stock which is limited and preferred as to dividends. In the case of investment in an entity organized under the laws of a foreign country, the foregoing requisite degree of ownership shall effect a like reduction of such investment from the net worth of the taxpayer, if the foreign

entity is considered a corporation for any purpose under the United States federal income tax laws, such as (but not by way of sole examples) for the purpose of supplying deemed paid foreign tax credits or for the purpose of status as a controlled foreign corporation. In calculating the net worth of a taxpayer entitled to reduction for investment in subsidiaries, the amount of liabilities of the taxpayer shall be reduced by such proportion of the liabilities as corresponds to the ratio which the excluded portion of the subsidiary values bears to the total assets of the taxpayer.

In the case of banking corporations which have international banking facilities as defined in subsection (n), the foregoing aggregate of values shall also be reduced by retained earnings of the international banking facility. Retained earnings means the earnings accumulated over the life of such facility and shall not include the distributive share of dividends paid and federal income taxes paid or payable during the tax year.

If in the opinion of the commissioner, the corporation's books do not disclose fair valuations the commissioner may make a reasonable determination of the net worth which, in his opinion, would reflect the fair value of the assets, exclusive of subsidiary investments as defined aforesaid, carried on the books of the corporation, in accordance with sound accounting principles, and such determination shall be used as net worth for the purpose of this act.

(e) (Deleted by amendment, P.L.1998, c.114.)

(f) "Investment company" shall mean any corporation whose business during the period covered by its report consisted, to the extent of at least 90% thereof of holding, investing and reinvesting in stocks, bonds, notes, mortgages, debentures, patents, patent rights and other securities for its own account, but this shall not include any corporation which: (1) is a merchant or a dealer of stocks, bonds and other securities, regularly engaged in buying the same and selling the same to customers; or (2) had less than 90% of its average gross assets in New Jersey, at cost, invested in stocks, bonds, debentures, mortgages, notes, patents, patent rights or other securities or consisting of cash on deposit during the period covered by its report; or (3) is a banking corporation, a savings institution, or a financial business corporation as defined in the Corporation Business Tax Act.

(g) "Regulated investment company" shall mean any corporation which for a period covered by its report, is registered and regulated under the Investment Company Act of 1940 (54 Stat. 789), as amended.

(h) "Taxpayer" shall mean any corporation, and any partnership required, or consenting, to report or to pay taxes, interest or penalties under this act. "Taxpayer" shall not include a partnership that is listed on a United States national stock exchange.

(i) "Fiscal year" shall mean an accounting period ending on any day other than the last day of December on the basis of which the taxpayer is required to report for federal income tax purposes.

(j) Except as herein provided, "privilege period" shall mean the calendar or fiscal accounting period for which a tax is payable under this act.

(k) "Entire net income" shall mean total net income from all sources, whether within or without the United States, and shall include the gain derived from the employment of capital or labor, or from both combined, as well as profit gained through a sale or conversion of capital assets.

For the purpose of this act, the amount of a taxpayer's entire net income shall be deemed prima facie to be equal in amount to the taxable income, before net operating loss deduction and special deductions, which the taxpayer is required to report, or, if the taxpayer is classified as a partnership for federal tax purposes, would otherwise be required to report, to the United States Treasury Department for the purpose of computing its federal income tax, provided however, that in the determination of such entire net income,

(1) Entire net income shall exclude for the periods set forth in paragraph (2)(F)(i) of this subsection, any amount, except with respect to qualified mass commuting vehicles as described in section 168(f)(8)(D)(v) of the Internal Revenue Code as in effect immediately prior to January 1, 1984, which is included in a taxpayer's federal taxable income solely as a result of an election made pursuant to the provisions of paragraph (8) of that section.

(2) Entire net income shall be determined without the exclusion, deduction or credit of:

(A) The amount of any specific exemption or credit allowed in any law of the United States imposing any tax on or measured by the income of corporations;

(B) Any part of any income from dividends or interest on any kind of stock, securities or indebtedness, except as provided in paragraph (5) of subsection (k) of this section;

(C) Taxes paid or accrued to the United States, a possession or territory of the United States, a state, a political subdivision thereof, or the District of Columbia, or to any foreign country, state, province, territory or subdivision thereof, on or measured by profits or income, or business presence or business activity, or the tax imposed by this act, or any tax paid or accrued with respect to subsidiary dividends excluded from entire net income as provided in paragraph (5) of subsection (k) of this section;

(D) (Deleted by amendment, P.L.1985, c.143.)

(E) (Deleted by amendment, P.L.1995, c.418.)

(F) (i) The amount by which depreciation reported to the United States Treasury Department for property placed in service on and after January 1, 1981, but prior to taxpayer fiscal or calendar accounting years beginning on and after the effective date of P.L.1993, c.172, for purposes of computing federal taxable income in accordance with section 168 of the Internal Revenue Code in effect after December 31, 1980, exceeds the amount of depreciation determined in accordance with the Internal Revenue Code provisions in effect prior to January 1, 1981, but only with respect to a taxpayer's accounting period ending after December 31, 1981; provided, however, that where a taxpayer's accounting period begins in 1981 and ends in 1982, no modification shall be required with respect to this paragraph (F) for the report filed for such period with respect to property placed in service during that part of the accounting period which occurs in 1981. The provisions of this subparagraph shall not apply to assets placed in service prior to January 1, 1998 of a gas, gas and electric, and electric public utility that was subject to the provisions of P.L.1940, c.5 (C.54:30A-49 et seq.) prior to 1998.

(ii) For the periods set forth in subparagraph (F)(i) of this subsection, any amount, except with respect to qualified mass commuting vehicles as described in section 168(f)(8)(D)(v) of the Internal Revenue Code as in effect immediately prior to January 1, 1984, which the taxpayer claimed as a deduction in computing federal income tax pursuant to a qualified lease agreement under paragraph (8) of that section.

The director shall promulgate rules and regulations necessary to carry out the provisions of this section, which rules shall provide, among others, the manner in which the remaining life of property shall be reported.

(G) (i) The amount of any civil, civil administrative, or criminal penalty or fine, including a penalty or fine under an administrative consent order, assessed and collected for a violation of a State or federal environmental law, an administrative consent order, or an environmental ordinance or resolution of a local governmental entity, and any interest earned on the penalty or fine, and any economic benefits having accrued to the violator as a result of a violation, which benefits are assessed and recovered in a civil, civil administrative, or criminal action, or pursuant to an administrative consent order. The provisions of this paragraph shall not apply to a penalty or fine assessed or collected for a violation of a State or federal environmental law, or local environmental ordinance or resolution, if the penalty or fine was for a violation that resulted from fire, riot, sabotage, flood, storm event, natural cause, or other act of God beyond the reasonable control of the violator, or caused by an act or omission of a person who was outside the reasonable control of the violator.

(ii) The amount of treble damages paid to the Department of Environmental Protection pursuant to subsection a. of section 7 of P.L.1976, c.141 (C.58:10-23.11f), for costs incurred by the department in removing, or arranging for the removal of, an unauthorized discharge upon failure of the discharger to comply with a directive from the department to remove, or arrange for the removal of, the discharge.

(H) The amount of any sales and use tax paid by a utility vendor pursuant to section 71 of P.L.1997, c.162.

(I) Interest paid, accrued or incurred for the privilege period to a related member , as defined in section 5 of P.L.2002, c.40 (C.54:10A-4.4), except that a deduction shall be permitted to the extent that the taxpayer establishes by clear and convincing evidence, as determined by the

director, that: (i) a principal purpose of the transaction giving rise to the payment of the interest was not to avoid taxes otherwise due under Title 54 of the Revised Statutes or Title 54A of the New Jersey Statutes, (ii) the interest is paid pursuant to arm's length contracts at an arm's length rate of interest, and (iii)(aa) the related member was subject to a tax on its net income or receipts in this State or another state or possession of the United States or in a foreign nation, (bb) a measure of the tax includes the interest received from the related member, and (cc) the rate of tax applied to the interest received by the related member is equal to or greater than a rate three percentage points less than the rate of tax applied to taxable interest by this State.

A deduction shall also be permitted if the taxpayer establishes by clear and convincing evidence, as determined by the director, that the disallowance of a deduction is unreasonable, or the taxpayer and the director agree in writing to the application or use of an alternative method of apportionment under section 8 of P.L.1945, c.162 (C.54:10A-8); nothing in this subsection shall be construed to limit or negate the director's authority to otherwise enter into agreements and compromises otherwise allowed by law.

A deduction shall also be permitted to the extent that the taxpayer establishes by a preponderance of the evidence, as determined by the director, that the interest is directly or indirectly paid, accrued or incurred to (i) a related member in a foreign nation which has in force a comprehensive income tax treaty with the United States, provided however that the taxpayer shall disclose on its return for the privilege period the name of the related member, the amount of the interest, the relevant foreign nation, and such other information as the director may prescribe or (ii) to an independent lender and the taxpayer guarantees the debt on which the interest is required.

(3) The commissioner may, whenever necessary to properly reflect the entire net income of any taxpayer, determine the year or period in which any item of income or deduction shall be included, without being limited to the method of accounting employed by the taxpayer.

(4) There shall be allowed as a deduction from entire net income of a banking corporation, to the extent not deductible in determining federal taxable income, the eligible net income of an international banking facility determined as follows:

(A) The eligible net income of an international banking facility shall be the amount remaining after subtracting from the eligible gross income the applicable expenses;

(B) Eligible gross income shall be the gross income derived by an international banking facility, which shall include, but not be limited to, gross income derived from:

(i) Making, arranging for, placing or carrying loans to foreign persons, provided, however, that in the case of a foreign person which is an individual, or which is a foreign branch of a domestic corporation (other than a bank), or which is a foreign corporation or foreign partnership which is controlled by one or more domestic corporations (other than banks), domestic partnerships or resident individuals, all the proceeds of the loan are for use outside of the United States;

(ii) Making or placing deposits with foreign persons which are banks or foreign branches of banks (including foreign subsidiaries) or foreign branches of the taxpayers or with other international banking facilities;

(iii) Entering into foreign exchange trading or hedging transactions related to any of the transactions described in this paragraph; or

(iv) Such other activities as an international banking facility may, from time to time, be authorized to engage in;

(C) Applicable expenses shall be any expense or other deductions attributable, directly or indirectly, to the eligible gross income described in subparagraph (B) of this paragraph.

(5) Entire net income shall exclude 100% of dividends which were included in computing such taxable income for federal income tax purposes, paid to the taxpayer by one or more subsidiaries owned by the taxpayer to the extent of the 80% or more ownership of investment described in subsection (d) of this section and shall exclude 50% of dividends which were included in computing such taxable income for federal income tax purposes, paid to the taxpayer by one or more subsidiaries owned by the taxpayer to the extent of 50% or more ownership of investment, such ownership of investment calculated in the same manner as the 80% or more of ownership of investment is calculated as described in subsection (d) of this section.

(6) (A) Net operating loss deduction. There shall be allowed as a deduction for the privilege period the net operating loss carryover to that period.

(B) Net operating loss carryover. A net operating loss for any privilege period ending after June 30, 1984 shall be a net operating loss carryover to each of the seven privilege periods following the period of the loss. The entire amount of the net operating loss for any privilege period (the "loss period") shall be carried to the earliest of the privilege periods to which the loss may be carried. The portion of the loss which shall be carried to each of the other privilege periods shall be the excess, if any, of the amount of the loss over the sum of the entire net income, computed without the exclusions permitted in paragraphs (4) and (5) of this subsection or the net operating loss deduction provided by subparagraph (A) of this paragraph, for each of the prior privilege periods to which the loss may be carried.

(C) Net operating loss. For purposes of this paragraph the term "net operating loss" means the excess of the deductions over the gross income used in computing entire net income without the net operating loss deduction provided for in subparagraph (A) of this paragraph and the exclusions in paragraphs (4) and (5) of this subsection.

(D) Change in ownership. Where there is a change in 50% or more of the ownership of a corporation because of redemption or sale of stock and the corporation changes the trade or business giving rise to the loss, no net operating loss sustained before the changes may be carried over to be deducted from income earned after such changes. In addition where the facts support the premise that the corporation was acquired under any circumstances for the primary purpose of the use of its net operating loss carryover, the director may disallow the carryover.

(E) Notwithstanding the provisions of this paragraph (6) of subsection (k) of this section to the contrary, for privilege periods beginning during calendar year 2002 and calendar year 2003, no deduction for any net operating loss carryover shall be allowed. If and only to the extent that any net operating loss carryover deduction is disallowed by reason of this subparagraph (E), the date on which the amount of the disallowed net operating loss carryover deduction would otherwise expire shall be extended by two years.

Provided, that this subparagraph (E)shall not restrict the surrender or acquisition of corporation business tax benefit certificates pursuant to section 1 of P.L.1997, c.334 (C.34:1B-7.42a) and shall not restrict the application of corporation business tax benefit certificates pursuant to section 2 of P.L.1997, c.334 (C.54:10A-4.2).

(7) The entire net income of gas, electric and gas and electric public utilities that were subject to the provisions of P.L.1940, c.5 (C.54:30A-49 et seq.) prior to 1998, shall be adjusted by substituting the New Jersey depreciation allowance for federal tax depreciation with respect to assets placed in service prior to January 1, 1998. For gas, electric, and gas and electric public utilities that were subject to the provisions of P.L.1940, c.5 (C.54:30A-49 et seq.) prior to 1998, the New Jersey depreciation allowance shall be computed as follows: All depreciable assets placed in service prior to January 1, 1998 shall be considered a single asset account. The New Jersey tax basis of this depreciable asset account shall be an amount equal to the carryover adjusted basis for federal income tax purposes on December 31, 1997 of all depreciable assets in service on December 31, 1997, increased by the excess, of the "net carrying value," defined to be adjusted book basis of all assets and liabilities, excluding deferred income taxes, recorded on the public utility's books of account on December 31, 1997, over the carryover adjusted basis for federal income tax purposes on December 31, 1997 of all assets and liabilities owned by the gas, electric, or gas and electric public utility as of December 31, 1997. "Books of account" for gas, gas and electric, and electric public utilities means the uniform system of accounts as promulgated by the Federal Energy Regulatory Commission and adopted by the Board of Public Utilities. The following adjustments to entire net income shall be made pursuant to this section:

(A) Depreciation for property placed in service prior to January 1, 1998 shall be adjusted as follows:

(i) Depreciation for federal income tax purposes shall be disallowed in full.

(ii) A deduction shall be allowed for the New Jersey depreciation allowance. The New Jersey depreciation allowance shall be computed for the single asset account described above based on the New Jersey tax basis as adjusted above as if all assets in the single asset account were first placed in service on January 1, 1998. Depreciation shall be computed using the straight line

method over a thirty-year life. A full year's depreciation shall be allowed in the initial tax year. No half-year convention shall apply. The depreciable basis of the single account shall be reduced by the adjusted federal tax basis of assets sold, retired, or otherwise disposed of during any year on which gain or loss is recognized for federal income tax purposes as described in subparagraph (B) of this paragraph.

(B) Gains and losses on sales, retirements and other dispositions of assets placed in service prior to January 1, 1998 shall be recognized and reported on the same basis as for federal income tax purposes.

(C) The Director of the Division of Taxation shall promulgate regulations describing the methodology for allocating the single asset account in the event that a portion of the utility's operations are separated, spun-off, transferred to a separate company or otherwise desegregated.

(8) In the case of taxpayers that are gas, electric, gas and electric, or telecommunication public utilities as defined pursuant to subsection (q) of this section, the director shall have authority to promulgate rules and issue guidance correcting distortions and adjusting timing differences resulting from the adoption of P.L.1997, c.162 (C.54:10A-5.25 et al.).

(9) Notwithstanding paragraph (1) of this subsection, entire net income shall not include the income derived by a corporation organized in a foreign country from the international operation of a ship or ships, or from the international operation of aircraft, if such income is exempt from federal taxation pursuant to section 883 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.883.

(10) Entire net income shall exclude all income of an alien corporation the activities of which are limited in this State to investing or trading in stocks and securities for its own account, investing or trading in commodities for its own account, or any combination of those activities, within the meaning of section 864 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.864, as in effect on December 31, 1998. Notwithstanding the previous sentence, if an alien corporation undertakes one or more infrequent, extraordinary or non-recurring activities, including but not limited to the sale of tangible property, only the income from such infrequent, extraordinary or non-recurring activity shall be subject to the tax imposed pursuant to P.L.1945, c.162 (C.54:10A-1 et seq.), and that amount of income subject to tax shall be determined without regard to the allocation to that specific transaction of any general business expense of the taxpayer and shall be specifically assigned to this State for taxation by this State without regard to section 6 of P.L.1945, c.162 (C.54:10A-6). For the purposes of this paragraph, "alien corporation" means a corporation organized under the laws of a jurisdiction other than the United States or its political subdivisions.

(11) No deduction shall be allowed for research and experimental expenditures, to the extent that those research and experimental expenditures are qualified research expenses or basic research payments for which an amount of credit is claimed pursuant to section 1 of P.L.1993, c.175 (C.54:10A-5.24) unless those research and experimental expenditures are also used to compute a federal credit claimed pursuant to section 41 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.41.

(12) (A) Notwithstanding the provisions of subsection (k) of section 168 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.168, and subsection (b) of section 1400L of the federal Internal Revenue Code of 1986, 26 U.S.C. s.1400L, for property acquired after September 10, 2001 and before September 11, 2004, the depreciation deduction otherwise allowed pursuant to section 167 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.167, shall be determined pursuant to the requirements and limitations of section 168 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.168, and section 280F of the federal Internal Revenue Code of 1986, 26 U.S.C. s.280F, as if that subsection (k) and that section 1400L were not in effect.

(B) The director shall prescribe the rules and regulations necessary to carry out the provisions of this paragraph, including, among others, those for determining the adjusted basis of the acquired property for the purposes of the "Corporation Business Tax Act (1945)", P.L.1945, c.162.

(l) "Real estate investment trust" shall mean any corporation, trust or association qualifying

and electing to be taxed as a real estate investment trust under federal law.

(m) "Financial business corporation" shall mean any corporate enterprise which is (1) in substantial competition with the business of national banks and which (2) employs moneyed capital with the object of making profit by its use as money, through discounting and negotiating promissory notes, drafts, bills of exchange and other evidences of debt; buying and selling exchange; making of or dealing in secured or unsecured loans and discounts; dealing in securities and shares of corporate stock by purchasing and selling such securities and stock without recourse, solely upon the order and for the account of customers; or investing and reinvesting in marketable obligations evidencing indebtedness of any person, copartnership, association or corporation in the form of bonds, notes or debentures commonly known as investment securities; or dealing in or underwriting obligations of the United States, any state or any political subdivision thereof, or of a corporate instrumentality of any of them. This shall include, without limitation of the foregoing, business commonly known as industrial banks, dealers in commercial paper and acceptances, sales finance, personal finance, small loan and mortgage financing businesses, as well as any other enterprise employing moneyed capital coming into competition with the business of national banks; provided that the holding of bonds, notes, or other evidences of indebtedness by individual persons not employed or engaged in the banking or investment business and representing merely personal investments not made in competition with the business of national banks, shall not be deemed financial business. Nor shall "financial business" include national banks, production credit associations organized under the Farm Credit Act of 1933 or the Farm Credit Act of 1971, Pub.L. 92-181 (12 U.S.C. s.2091 et seq.), stock and mutual insurance companies duly authorized to transact business in this State, security brokers or dealers or investment companies or bankers not employing moneyed capital coming into competition with the business of national banks, real estate investment trusts, or any of the following entities organized under the laws of this State: credit unions, savings banks, savings and loan and building and loan associations, pawnbrokers, and State banks and trust companies.

(n) "International banking facility" shall mean a set of asset and liability accounts segregated on the books and records of a depository institution, United States branch or agency of a foreign bank, or an Edge or Agreement Corporation that includes only international banking facility time deposits and international banking facility extensions of credit as such terms are defined in section 204.8(a)(2) and section 204.8(a)(3) of Regulation D of the board of governors of the Federal Reserve System, 12 CFR Part 204, effective December 3, 1981. In the event that the United States enacts a law, or the board of governors of the Federal Reserve System adopts a regulation which amends the present definition of international banking facility or of such facilities' time deposits or extensions of credit, the Commissioner of Banking and Insurance shall forthwith adopt regulations defining such terms in the same manner as such terms are set forth in the laws of the United States or the regulations of the board of governors of the Federal Reserve System. The regulations of the Commissioner of Banking and Insurance shall thereafter provide the applicable definitions.

(o) "S corporation" means a corporation included in the definition of an "S corporation" pursuant to section 1361 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.1361.

(p) "New Jersey S corporation" means a corporation that is an S corporation; which has made a valid election pursuant to section 3 of P.L.1993, c.173 (C.54:10A-5.22); and which has been an S corporation continuously since the effective date of the valid election made pursuant to section 3 of P.L.1993, c.173 (C.54:10A-5.22).

(q) "Public Utility" means "public utility" as defined in R.S.48:2-13.

(r) "Qualified investment partnership" means a partnership under this act that has more than 10 members or partners with no member or partner owning more than a 50% interest in the entity and that derives at least 90% of its gross income from dividends, interest, payments with respect to securities loans, and gains from the sale or other disposition of stocks or securities or foreign currencies or commodities or other similar income (including but not limited to gains from swaps, options, futures or forward contracts) derived with respect to its business of investing or trading in those stocks, securities, currencies or commodities, but "investment partnership" shall not include a "dealer in securities" within the meaning of section 1236 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.1236.

(s) "Savings institution" means a state or federally chartered building and loan association, savings and loan association, or savings bank.

(t) "Partnership" means an entity classified as a partnership for federal income tax purposes.

4. Section 1 of P.L.1997, c.350 (C.54:10A-4.3) is amended to read as follows:

C.54:10A-4.3 Carryover of net operating loss for certain taxpayers.

1. a. Notwithstanding the provisions of paragraph (6) of subsection (k) of section 4 of P.L.1945, c.162 (C.54:10A-4) to the contrary, a taxpayer that has for the fiscal or calendar accounting period (referred to hereinafter as the "tax year"), qualified research expenses as defined in section 41 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.41, as in effect on June 30, 1992, paid or incurred for research conducted in this State, in the fields of advanced computing, advanced materials, biotechnology, electronic device technology, environmental technology, or medical device technology, shall be allowed to carry over a net operating loss for that tax year to each of the 15 tax years following the year of the loss.

b. As used in this section:

"Advanced computing" means a technology used in the designing and developing of computing hardware and software, including innovations in designing the full spectrum of hardware from hand-held calculators to super computers, and peripheral equipment;

"Advanced materials" means materials with engineered properties created through the development of specialized processing and synthesis technology, including ceramics, high value-added metals, electronic materials, composites, polymers, and biomaterials;

"Biotechnology" means the continually expanding body of fundamental knowledge about the functioning of biological systems from the macro level to the molecular and sub-atomic levels, as well as novel products, services, technologies and sub-technologies developed as a result of insights gained from research advances which add to that body of fundamental knowledge;

"Electronic device technology" means a technology involving microelectronics, semiconductors, electronic equipment, and instrumentation, radio frequency, microwave, and millimeter electronics, and optical and optic-electrical devices, or data and digital communications and imaging devices;

"Environmental technology" means assessment and prevention of threats or damage to human health or the environment, environmental cleanup, or the development of alternative energy sources; and

"Medical device technology" means a technology involving any medical equipment or product (other than a pharmaceutical product) that has therapeutic value, diagnostic value, or both, and is regulated by the federal Food and Drug Administration.

c. Notwithstanding the provisions of subsection a. of this section, for tax years beginning during calendar year 2002 and calendar year 2003, no deduction for any net operating loss carryover shall be allowed. If and only to the extent that any net operating loss carryover deduction is disallowed by reason of this subsection, the date on which the amount of the disallowed net operating loss carryover deduction would otherwise expire shall be extended by two years.

C.54:10A-4.4 Definitions relative to computing entire net income and related member transactions.

5. a. For the purposes of this section:

"Intangible expenses and costs" includes (1) expenses, losses and costs for, related to, or in connection directly or indirectly with the direct or indirect acquisition, use, maintenance or management, ownership, sale, exchange, or any other disposition of intangible property to the extent such amounts are allowed as deductions or costs in determining taxable income before operating loss deduction and special deductions for the taxable year under the federal Internal Revenue Code of 1986, 26 U.S.C. s.1 et seq.; (2) losses related to, or incurred in connection directly or indirectly with, factoring transactions or discounting transactions; (3) royalty, patent, technical and copyright fees; (4) licensing fees; and (5) other similar expenses and costs.

"Intangible property" means patents, patent applications, trade names, trademarks, service

marks, copyrights, mask works, trade secrets and similar types of intangible assets.

"Interest expenses and costs" means amounts directly or indirectly allowed as deductions under section 163 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.163, for purposes of determining taxable income under the code to the extent such expenses and costs are directly or indirectly for, related to, or in connection with the direct or indirect acquisition, maintenance, management, ownership, sale, exchange or disposition of intangible property.

"Related member" means a person that, with respect to the taxpayer during all or any portion of the privilege period, is: (1)a related entity, (2)a component member as defined in subsection (b) of section 1563 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.1563, (3) is a person to or from whom there is attribution of stock ownership in accordance with subsection (e) of section 1563 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.1563, or (4) is a person that, notwithstanding its form of organization, bears the same relationship to the taxpayer as a person described in (1) through (3) of this definition.

"Related entity" means (1) a stockholder who is an individual, or a member of the stockholder's family enumerated in section 318 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.318, if the stockholder and the members of the stockholder's family own, directly, indirectly, beneficially or constructively, in the aggregate, at least 50% of the value of the taxpayer's outstanding stock; (2) a stockholder, or a stockholder's partnership, limited liability company, estate, trust or corporation, if the stockholder and the stockholder's partnerships, limited liability companies, estates, trusts and corporations own directly, indirectly, beneficially or constructively, in the aggregate, at least 50% per cent of the value of the taxpayer's outstanding stock; or (3) a corporation, or a party related to the corporation in a manner that would require an attribution of stock from the corporation to the party or from the party to the corporation under the attribution rules of the federal Internal Revenue Code of 1986, 26 U.S.C. s.318, if the taxpayer owns, directly, indirectly, beneficially or constructively, at least 50% percent of the value of the corporation's outstanding stock. The attribution rules of the federal Internal Revenue Code of 1986, 26 U.S.C. s.318, shall apply for purposes of determining whether the ownership requirements of this definition have been met.

b. For purposes of computing its entire net income under section 4 of P.L.1945, c.162 (C.54:10A-4), a taxpayer shall add back otherwise deductible interest expenses and costs and intangible expenses and costs directly or indirectly paid, accrued or incurred to, or in connection directly or indirectly with one or more direct or indirect transactions with, one or more related members.

c. (1) The adjustments required in subsection b. of this section shall not apply if: (a) the interest expenses and costs and intangible expenses and costs are directly or indirectly paid, accrued or incurred to a related member in a foreign nation which has in force a comprehensive income tax treaty with the United States; or (b) the taxpayer establishes by clear and convincing evidence, as determined by the director, that the adjustments are unreasonable; or(c)the taxpayer and the director agree in writing to the application or use of an alternative method of apportionment under section 8 of P.L.1945, c.162 (C.54:10A-8). Nothing in this subsection shall be construed to limit or negate the director's authority to otherwise enter into agreements and compromises otherwise allowed by law.

(2) For the purposes of qualifying for the exception provided by subparagraph (a) of paragraph (1) of this subsection, the taxpayer shall disclose on its return for the privilege period the name of the related member, the amount of the interest expenses and costs and intangible expenses and costs deducted, the relevant foreign nation, and such other information as the director may prescribe.

(3) The adjustments required in subsection b. of this section shall not apply to the portion of interest expenses and costs and intangible expenses and costs that the taxpayer establishes by a preponderance of the evidence meets both of the following: (a) the related member during the same income year directly or indirectly paid, received, accrued or incurred the portion to or from a person that is not a related member, and (b) the transaction giving rise to the interest expenses and costs or the intangible expenses and costs between the taxpayer and the related member did not have as a principal purpose the avoidance of any portion of the tax due under Title 54 of the Revised Statutes or Title 54A of the New Jersey Statutes.

d. Nothing in this section shall require a taxpayer to add to its net income more than once any amount of interest expenses and costs and intangible expenses and costs that the taxpayer pays, accrues or incurs to a related member described in subsection b. of this section.

e. Nothing in this section shall be construed to limit or negate the director's authority to make adjustments under paragraph (3) of subsection (k) of section 4 of P.L.1945, c.162 (C.54:10A-4), section 8 of P.L.1945, c.162 (C.54:10A-8), or section 10 of P.L.1945, c.162 (C.54:10A-10).

6. Section 5 of P.L.1945, c.162 (C.54:10A-5) is amended to read as follows:

C.54:10A-5 Franchise tax.

5. The franchise tax to be annually assessed to and paid by each taxpayer shall be the greater of the amount computed pursuant to this section or the alternative minimum assessment computed pursuant to section 7 of P.L.2002, c.40 (C.54:10A-5a); provided however, that in the case of a taxpayer that is a New Jersey S corporation, an investment company, a professional corporation organized pursuant to P.L.1969, c. 232 (C.14A:17-1 et seq.) or a similar corporation for profit organized for the purpose of rendering professional services under the laws of another state, or a person operating on a cooperative basis under Part I of Subchapter T of the federal Internal Revenue Code of 1986, 26 U.S.C. s.1381 et seq.,there shall be no alternative minimum assessment computed pursuant to section 7 of P.L.2002, c.40 (C.54:10A-5a).

The amount computed pursuant to this section shall be sum of the amount computed under subsection (a) hereof, or in the alternative to the amount computed under subsection (a) hereof, the amount computed under subsection (f) hereof, and the amount computed under subsection (c) hereof:

(a) That portion of its entire net worth as may be allocable to this State as provided in section 6, multiplied by the following rates: 2 mills per dollar on the first $100,000,000.00 of allocated net worth; 4/10 of a mill per dollar on the second $100,000,000.00; 3/10 of a mill per dollar on the third $100,000,000.00; and 2/10 of a mill per dollar on all amounts of allocated net worth in excess of $300,000,000.00; provided, however, that with respect to reports covering accounting or privilege periods set forth below, the rate shall be that percentage of the rate set forth in this subsection for the appropriate year:

Accounting or Privilege Periods Beginning on or after:	The Percentage of the Rate to be Imposed Shall be:
April 1, 1983	75%
July 1, 1984	50%
July 1, 1985	25%
July 1, 1986	0

(b) (Deleted by amendment, P.L.1968, c.250, s.2.)

(c) (1) For a taxpayer that is not a New Jersey S corporation, 3 1/4% of its entire net income or such portion thereof as may be allocable to this State as provided in section 6 of P.L.1945, c.162 (C.54:10A-6) plus such portion thereof as is specifically assigned to this State as provided in section 5 of P.L.1993, c.173 (C.54:10A-6.1); provided, however, that with respect to reports covering accounting or privilege periods or parts thereof ending after December 31, 1967, the rate shall be 4 1/4%; and that with respect to reports covering accounting or privilege periods or parts thereof ending after December 31, 1971, the rate shall be 5 1/2%; and that with respect to reports covering accounting or privilege periods or parts thereof ending after December 31, 1974, the rate shall be 7 1/2%; and that with respect to reports covering privilege periods or parts thereof ending after December 31, 1979, the rate shall be 9%; provided however, that for a taxpayer that has entire net income of $100,000 or less for a privilege period and is not a partnership the rate for that privilege period shall be 7 1/2% and provided further that for a

taxpayer that has entire net income of $50,000 or less for a privilege period and is not a partnership the rate for that privilege period shall be 6 1/2%.

(2) For a taxpayer that is a New Jersey S corporation:

(i) for privilege periods ending on or before June 30, 1998 the rate determined by subtracting the maximum tax bracket rate provided under N.J.S.54A:2-1 for the privilege period from the tax rate that would otherwise be applicable to the taxpayer's entire net income for the privilege period if the taxpayer were not an S corporation provided under paragraph (1) of this subsection for the privilege period; and

(ii) For a taxpayer that has entire net income in excess of $100,000 for the privilege period, for privilege periods ending on or after July 1, 1998, but on or before June 30, 2001, the rate shall be 2%,

for privilege periods ending on or after July 1, 2001, but on or before June 30, 2006, the rate shall be 1.33%,

for privilege periods ending on or after July 1, 2006, but on or before June 30, 2007, the rate shall be 0.67%, and

for privilege periods ending on or after July 1, 2007 there shall be no rate of tax imposed under this paragraph, and

(iii) For a taxpayer that has entire net income of $100,000 or less for privilege periods ending on or after July 1, 1998, but on or before June 30, 2001 the rate for that privilege period shall be 0.5%, and for privilege periods ending on or after July 1, 2001 there shall be no rate of tax imposed under this paragraph.

(iv) The taxpayer's rate determined under subparagraph (i), (ii) or (iii) of this paragraph shall be multiplied by its entire net income that is not subject to federal income taxation or such portion thereof as may be allocable to this State pursuant to sections 6 through 10 of P.L.1945, c.162 (C.54:10A-6 through 54:10A-10) plus such portion thereof as is specifically assigned to this State as provided in section 5 of P.L.1993, c.173 (C.54:10A-6.1).

(3) For a taxpayer that is a New Jersey S corporation, in addition to the amount, if any, determined under paragraph (2) of this subsection, the tax rate that would otherwise be applicable to the taxpayer's entire net income for the privilege period if the taxpayer were not an S corporation provided under paragraph (1) of this subsection for the privilege period multiplied by its entire net income that is subject to federal income taxation or such portion thereof as may be allocable to this State pursuant to sections 6 through 10 of P.L.1945, c.162 (C.54:10A-6 through 54:10A-10).

(d) Provided, however, that the franchise tax to be annually assessed to and paid by any investment company or real estate investment trust, which has elected to report as such and has filed its return in the form and within the time provided in this act and the rules and regulations promulgated in connection therewith, shall, in the case of an investment company, be measured by 40%of its entire net income and 40%of its entire net worth, and in the case of a real estate investment trust, by 4% of its entire net income and 15% of its entire net worth, at the rates hereinbefore set forth for the computation of tax on net income and net worth, respectively, but in no case less than $250, and further provided, however, that the franchise tax to be annually assessed to and paid by a regulated investment company which for a period covered by its report satisfies the requirements of Chapter 1, Subchapter M, Part I, Section 852(a) of the federal Internal Revenue Code shall be $250.

(e) The tax assessed to any taxpayer pursuant to this section shall not be less than $25 in the case of a domestic corporation, $50 in the case of a foreign corporation, or $250 in the case of an investment company or regulated investment company. Provided however, that for privilege periods beginning in calendar year 1994 and thereafter the minimum taxes for taxpayers other than an investment company or a regulated investment company shall be as provided in the following schedule:

Period Beginning In Calendar Year	Domestic Corporation	Foreign Corporation

	Minimum Tax	Minimum Tax
1994	$ 50	$100
1995	$100	$200
1996	$150	$200
1997	$200	$200
1998	$200	$200
1999	$200	$200
2000	$200	$200
2001	$210	$210

and for calendar year 2002 and thereafter the minimum tax for all taxpayers shall be $500; provided however, that for a taxpayer that is a member of an affiliated group or a controlled group pursuant to section 1504 or 1563 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.1504 or 1563, and whose group has total payroll of $5,000,000 or more for the privilege period, the minimum tax shall be $2,000 for the privilege period; and provided further that the director shall adjust the minimum tax amounts for privilege periods beginning in each fifth year following calendar year 2002 and each fifth year thereafter by multiplying the minimum tax for periods beginning in 2002 by an amount equal to one plus 75% of the increase, if any, in the annual average total producer price index for finished goods published by the federal Department of Labor, Bureau of Labor Statistics, for the year preceding the determination year over such index for calendar year 2001,which adjusted minimum tax amount shall be rounded to the next highest multiple of $10.

(f) In lieu of the portion of the tax based on net worth and to be computed under subsection (a) of this section, any taxpayer, the value of whose total assets everywhere, less reasonable reserves for depreciation, as of the close of the period covered by its report, amounts to less than $150,000, may elect to pay the tax shown in a table which shall be promulgated by the director.

(g) Provided however, that for privilege periods beginning on or after January 1, 2001 but before January 1, 2002 the franchise tax annually assessed to and paid by a taxpayer:

(1) that is a limited liability company or foreign limited liability company classified as a partnership for federal income tax purposes shall be the amount determined pursuant to the provisions of section 3 of P.L.2001, c.136 (C.54:10A-15.6); or

(2) that is a limited partnership or foreign limited partnership classified as a partnership for federal income tax purposes shall be the amount determined pursuant to the provisions of section 4 of P.L.2001, c.136 (C.54:10A-15.7).

(h) Provided however, that for privilege periods beginning on or after January 1, 2002 the franchise tax annually assessed to and paid by a taxpayer that is a partnership shall be the amount determined pursuant to the provisions of section 12 of P.L.2002, c.40 (C.54:10A-15.11).

(i) Notwithstanding the provisions of subsection c. of this section to the contrary, and notwithstanding the provisions of subsection (B) of section 6 of P.L.1945, c.162 (C.54:10A-6) to the contrary, the amount by which the exclusion of receipts from the denominator of the sales fraction pursuant to subsection (B) of section 6 of P.L.1945, c.162 (C.54:10A-6) increases the liability of all of the members of an affiliated group or a controlled group pursuant to section 1504 or 1563 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.1504 or 1563, over that liability calculated without application of the exclusion for a privilege period shall not exceed $5,000,000. If the exclusion of receipts from the denominator of the sales fraction pursuant to subsection (B) would otherwise increase the liability of all of the members of an affiliated group or a controlled group by more than $5,000,000 for a privilege period, then the amount of liability in excess of $5,000,000 due to the exclusion of receipts from the denominator shall be abated, and the abated liability shall be allocated among the members of the affiliated group or the controlled group in proportion to each member's increase in liability due to the exclusion of such receipts; provided however, that the director may allow a single corporation within the affiliated group or controlled group to act as the key corporation for the abatement, in such manner as the director may prescribe.

C.54:10A-5a Definitions relative to alternative minimum assessment.

7. a. For the purposes of this section:

"Affiliated group" means a group of corporations defined as an affiliated group by section 1504 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.1504, or any successor federal law, that files a consolidated federal income tax return for the privilege period pursuant to sections 1501 through 1504 of the federal Internal Revenue Code of 1986, 26 U.S.C. ss.1501-1504 or any successor federal law.

"Cost of goods sold" means the cost of goods sold calculated pursuant to the same method used by the taxpayer for the purpose of computing its federal income tax, or other input or expenditure, as determined by the director, as may be necessary to equitably measure the business activity of the taxpayer, multiplied by the allocation factor computed as set forth in section 6 of P.L.1945, c.162 (C.54:10A-6).

"Member of an affiliated group" means a taxpayer that is part of an affiliated group.

"New Jersey gross profits" means New Jersey gross receipts reduced by returns and allowances attributable to New Jersey gross receipts, less the cost of goods sold.

"New Jersey gross receipts" means the receipts of the taxpayer for the privilege period, computed on the cash or accrual basis according to the method of accounting used in the computation of its net income for federal tax purposes arising during the privilege period from:

(1) sales of its tangible personal property located within this State at the time of the receipt of or appropriation to the orders where shipments are made to points within this State,

(2) sales of tangible personal property located without the State at the time of the receipt of or appropriation to the orders where shipment is made to points within the State,

(3) services performed within the State,

(4) rentals from property situated, and royalties from the use of patents or copyrights, within the State,

(5) all other business receipts earned within the State.

b. For privilege periods beginning on or after January 1, 2002, the alternative minimum assessment shall be equal to the amount computed under paragraph (1) or (2) of this subsection pursuant to the election made pursuant to subsection c. of this section:

(1) If New Jersey gross profits are:	the assessment is:
Not more than $1,000,000	No amount is assessed
More than $1,000,000 but not over $10,000,000	.0025 times the gross profits in excess of $1,000,000 multiplied by 1.11111
More than $10,000,000 but not over $15,000,000	.0035 times the gross profits
More than $15,000,000 but not over $25,000,000	.006 times the gross profits
More than $25,000,000 but not over $37,500,000	.007 times the gross profits
More than $37,500,000	.008 times the gross profits; or
(2) If New Jersey gross receipts are:	the assessment is:
Not more than $2,000,000	No amount is assessed
More than $2,000,000 but not over $20,000,000	.00125 times the gross receipts in excess of $2,000,000 multiplied by 1.11111
More than $20,000,000 but not over $30,000,000	.00175 times the gross receipts
More than $30,000,000 but not over $50,000,000	.003 times the gross receipts
More than $50,000,000 but not over $75,000,000	.0035 times the gross receipts
More than $75,000,000	.004 times the gross receipts

(3) The sum of the amounts untaxed for all of the members of an affiliated group or a controlled group pursuant to section 1504 or 1563 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.1504 or 1563, shall not exceed $5,000,000 of gross profits, or shall not exceed $10,000,000 of gross receipts, or, for a group whose members have not all elected the same computation method under this subsection, shall not exceed five times the applicable

amounts not subject to assessment of the individual members.

c. A taxpayer shall, for the first privilege period for which it is required to compute the alternative minimum assessment pursuant to this section, elect to employ the computation method set forth in paragraph (1) or the computation method set forth in paragraph (2) of subsection b. of this section, which computation method shall be employed by the taxpayer for the computation of the alternative minimum assessment for that privilege period and for the next succeeding four privilege periods, pursuant to regulations and forms as the director may prescribe. The taxpayer may change its election at any time after the initial five privilege periods; provided however, that any change in the method of computation of the alternative minimum assessment which the taxpayer elects shall be employed by the taxpayer for the privilege period for which the change is effective and for the next four succeeding privilege periods.

d. (1) Notwithstanding the provisions of subsection b. of this section, the alternative minimum assessment for a taxpayer for a privilege period, shall not exceed $5,000,000.

(2) If five or more taxpayers are members of an affiliated group, the sum of the alternative minimum assessments of each of the members of the affiliated group for a privilege period shall not exceed $20,000,000. If the sum of the alternative minimum assessment for all members of the affiliated group computed as set forth in subsection b. after application of the maximum set by paragraph (1) of this subsection would otherwise exceed $20,000,000, the alternative minimum assessment for a member of the affiliated group shall equal the alternative minimum assessment for that member of the affiliated group computed as set forth in subsection b. after application of the maximum set by paragraph (1) of this subsection multiplied by a fraction, the numerator of which is $20,000,000 and the denominator of which is the sum of the alternative minimum assessments for all members of the affiliated group computed as set forth in subsection b. after application of the maximum set by paragraph (1) of this subsection.

(3) For the purpose of calculating the alternative minimum assessment, the amount of the sum of the alternative minimum assessments of the members of an affiliated group shall not, when added to the amounts of the members' tax computed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), exceed $20,000,000.

e. The alternative minimum assessment computed pursuant to this section for privilege periods commencing after June 30, 2006 shall be $0.00, except that for taxpayers exempt from corporation net income taxation pursuant to 15 U.S.C. s.381 et seq. (Pub.L.86-272), 73 Stat. 555, such assessment shall continue to be computed as otherwise provided herein; provided however, that for privilege periods commencing after December 31, 2006, a taxpayer exempt from corporation net income taxation pursuant to 15 U.S.C. s.381 et seq. that has filed a consent, in the form as shall be prescribed by the director, to the jurisdiction of this State to impose and the duty of the taxpayer to pay the tax imposed pursuant to section 5 of P.L.1945, c.165 (C.54:10A-5) for the privilege period shall have an alternative minimum assessment for that period of $0.00.

f. (1) If the alternative minimum assessment for a taxpayer computed pursuant to this section exceeds the tax computed pursuant to section 5 of P.L.1945, c.165 (C.54:10A-5) for a privilege period, the taxpayer shall be allowed an amount of credit equal to the amount by which the alternative minimum assessment computed pursuant to this section for the privilege period exceeds the tax computed pursuant to section 5 of P.L.1945, c.165 (C.54:10A-5) for that privilege period; provided however, that a taxpayer shall not be allowed a credit for any amount of alternative minimum assessment for a privilege period for which a credit is allowed pursuant to section 29 of P.L.2002, c.40 (C.54:10A-5b). The amount of credit may be carried forward for application in subsequent privilege periods subject to the limitations of paragraph (2) of this subsection.

(2) A taxpayer may apply all or a portion of the credits allowed by paragraph (1) of this subsection against the tax computed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), for a privilege period for which the tax pursuant to that section exceeds the alternative minimum assessment computed for the privilege period pursuant to this section; provided however, that the amount of credit applied shall not reduce the amount of tax otherwise due to less than the alternative minimum assessment as computed pursuant to this section for the privilege period,

shall not reduce the amount of tax otherwise due by more than 50%, and shall not reduce the amount of tax otherwise due below the statutory minimum provided in subsection (e) of section 5 of P.L.1945, c.162 (C.54:10A-5).

8. Section 6 of P.L.1945, c.162 (C.54:10A-6) is amended to read as follows:

C.54:10A-6 Allocation factor.

6. In the case of a taxpayer which maintains a regular place of business outside this State other than a statutory office, the portion of its entire net worth to be used as a measure of the tax imposed by subsection (a) of section 5 of P.L.1945, c.162 (C.54:10A-5), and the portion of its entire net income to be used as a measure of the tax imposed by subsection (c) of section 5 of P.L.1945, c.162 (C.54:10A-5), shall be determined by multiplying such entire net worth and entire net income, respectively, by an allocation factor which is the property fraction, plus twice the sales fraction plus the payroll fraction and the denominator of which is four, except as the director may determine pursuant to section 8 of P.L.1945, c.162 (C.54:10A-8), that is:

(A) The property fraction is the average value of the taxpayer's real and tangible personal property within the State during the period covered by its report divided by the average value of all the taxpayer's real and tangible personal property wherever situated during such period; provided, however, that for the purpose of determining average value, the provisions with respect to depreciation as set forth in subparagraph (F) of paragraph (2) of subsection (k) of section 4 of P.L.1945, c.162 (C.54:10A-4) shall be taken into account for arriving at such value.

(B) The sales fraction is the receipts of the taxpayer, computed on the cash or accrual basis according to the method of accounting used in the computation of its net income for federal tax purposes, arising during such period from

(1) sales of its tangible personal property located within this State at the time of the receipt of or appropriation to the orders where shipments are made to points within this State,

(2) sales of tangible personal property located without the State at the time of the receipt of or appropriation to the orders where shipment is made to points within the State,

(3) (Deleted by amendment.)

(4) services performed within the State,

(5) rentals from property situated, and royalties from the use of patents or copyrights, within the State,

(6) all other business receipts (excluding dividends excluded from entire net income by paragraph (1) of subsection (k) of section 4 of P.L.1945, c.162 (C.54:10A-4))earned within the State,

divided by the total amount of the taxpayer's receipts, similarly computed, arising during such period from all sales of its tangible personal property, services, rentals, royalties and all other business receipts, whether within or without the State; provided however, that if receipts would be assigned to a state, a possession or territory of the United States or the District of Columbia or to any foreign country in which the taxpayer is not subject to a tax on or measured by profits or income, or business presence or business activity, then the receipts shall be excluded from the denominator of the sales fraction.

(C) The payroll fraction is the total wages, salaries and other personal service compensation, similarly computed, during such period of officers and employees within the State divided by the total wages, salaries and other personal service compensation, similarly computed, during such period of all the taxpayer's officers and employees within and without the State.

In the case of a taxpayer which does not maintain a regular place of business outside this State other than a statutory office, the allocation factor shall be 100%.

In the case of a banking corporation which maintains a regular place of business outside this State other than a statutory office, and which elects to take the exclusion from net worth provided in subsection (d) of section 4 of P.L.1945, c.162 (C.54:10A-4) or the deduction from entire net income provided in paragraph (4) of subsection (k) of section 4 of P.L.1945, c.162 (C.54:10A-4), the allocation factor shall be computed and applied in accordance with section 6 of P.L.1945, c.162 (C.54:10A-6); provided, however, that the numerators and the denominators of the fractions described in (A), (B) or (C) above shall include all amounts attributable, directly

or indirectly, to the production of the eligible net income of an international banking facility as defined in paragraph (4) of subsection (k) of section 4 of P.L.1945, c.162 (C.54:10A-4), whether or not such amounts are otherwise attributable to this State.

9. Section 5 of P.L.1993, c.173 (C.54:10A-6.1) is amended to read as follows:

C.54:10A-6.1 "Operational income" defined; related corporate expenses not deductible; conditions; forms; rules.

5. a. "Operational income" subject to allocation to New Jersey means income from tangible and intangible property if the acquisition, management, and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations and includes investment income serving an operational function. Income that a taxpayer demonstrates with clear and convincing evidence is not operational income is classified as nonoperational income, and the nonoperational income of taxpayers is not subject to allocation but shall be specifically assigned; provided, that 100% of the nonoperational income of a taxpayer that has its principal place from which the trade or business of the taxpayer is directed or managed in this State shall be specifically assigned to this State to the extent permitted under the Constitution and statutes of the United States.

b. Corporate expenses related to nonoperational income are not deductible in determining entire net income. Notwithstanding the provisions of R.S.54:49-6 or any other law to the contrary:

(1) if in prior privilege periods property had been classified as operational property, and later is demonstrated to have been nonoperational property and is subsequently disposed of, all expenses, without limitation, deducted for prior privilege periods related to such nonoperational property shall be added back and recaptured as income in the period of disposition of such property;

(2) if in prior privilege periods income had been classified as serving an operational function, and later is demonstrated not to have been serving an operational function, all expenses, without limitation, deducted in prior privilege periods related to such income not serving an operational function shall be added back and recaptured as income; and

(3) the denominators of the fractions used to determine the allocation factor pursuant to section 6 of P.L.1945, c.162 (C.54:10A-6), for privilege periods for which redeterminations are required pursuant to paragraphs (1) and (2) of this subsection shall be redetermined to exclude the amounts, if any, relating to the nonoperational property or the nonoperational income.

c. The Director of the Division of Taxation shall prescribe such forms for administration and adopt such administrative rules as the director deems necessary for the implementation of this section.

10. Section 10 of P.L.1945, c.162 (C.54:10A-10) is amended to read as follows:

C.54:10A-10 Evasion of tax; adjustments and redeterminations; obtaining information.

10. a. Whenever it shall appear to the director that any taxpayer fails to maintain its records in accordance with sound accounting principles or conducts its business or maintains its records in such manner as either directly or indirectly to distort its true entire net income or its true entire net worth under this act or the proportion thereof properly allocable to this State, or whenever any taxpayer maintains a place of business outside this State, or whenever any agreement, understanding or arrangement exists between a taxpayer and any other corporation or any person or firm, for the purpose of evading tax under this act, or whereby the activity, business, receipts, expenses, assets, liabilities, income or net worth of the taxpayer are improperly or inaccurately reflected, the director is authorized and empowered, in the director's discretion and in such manner as the director may determine, to adjust and redetermine such items, and to adjust items of gross receipts, tangible or intangible property and payrolls within and without the State and the allocation of entire net income or entire net worth or to make any other adjustments in any tax report or tax returns as may be necessary to make a fair and reasonable determination of the amount of tax payable under this act.

b. Where (1) any taxpayer conducts its activity or business under any agreement, arrangement or understanding in such manner as either directly or indirectly to benefit its members or stockholders, or any of them, or any person or persons directly or indirectly interested in such activity or business, by entering into any transaction at more or less than a fair price which, but for such agreement, arrangement or understanding, might have been paid or received therefor, or (2) any taxpayer, a substantial portion of whose capital stock is owned either directly or indirectly by or through another corporation, enters into any transaction with such other corporation on such terms as to create an improper loss or net income, the director may include in the entire net income of the taxpayer the fair profits which, but for such agreement, arrangement or understanding, the taxpayer might have derived from such transaction. The director may require any person or corporation to submit such information under oath or affirmation, or to permit such examination of its books, papers and documents, as may be necessary to enable the director to determine the existence, nature or extent of an agreement, understanding or arrangement to which this section relates, whether or not such person or corporation is subject to the tax imposed by this act.

c. The entire net income of a taxpayer exercising its franchise in this State that is a member of an affiliated group or a controlled group pursuant to section 1504 or 1563 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.1504 or 1563, shall be determined by eliminating all payments to, or charges by, other members of the affiliated or controlled group in excess of fair compensation in all inter-group transactions of any kind. Notwithstanding the elimination of all inter-group transactions in excess of fair compensation, if the taxpayer cannot demonstrate by clear and convincing evidence that a report by a taxpayer discloses the true earnings of the taxpayer on its business carried on in this State, the director may, at the director's discretion, require the taxpayer to file a consolidated return of the entire operations of the affiliated group or controlled group, including its own operations and income to the extent permitted under the Constitution and statutes of the United States. The director shall determine the true amount of entire net income earned by the taxpayer in this State. The consolidated entire net income of the taxpayer and of the other members of its affiliated group or controlled group shall be allocated to this State by use of the applicable allocation formula that the director requires pursuant to P.L.1945, c.162 (C.54A:10A-1 et seq.) be used by the taxpayer. The return shall include in the allocation formula the property, payrolls, and sales of all corporations for which the return is made. The director may require a consolidated return under this section without regard to whether the other members of the affiliated or controlled group, other than the taxpayer, are or are not exercising their franchises in this State.

A consolidated return required by this section shall be filed within 60 days after it is demanded, subject to the penalties of the State Uniform Tax Procedure Law, R.S.54:48-1 et seq.

The member of an affiliated group or a controlled group shall incorporate in its return required under this section information needed to determine under this section its taxable entire net income, and shall furnish any additional information the director requires, subject to the penalties of the State Uniform Tax Procedure Law, R.S.54:48-1 et seq. A taxpayer shall furnish any additional information requested within 30 days after it is demanded, subject to the penalties of the State Uniform Tax Procedure Law, R.S.54:48-1 et seq.

11. Section 14 of P.L.1945, c.162 (C.54:10A-14) is amended to read as follows:

C.54:10A-14 Copies of information may be demanded by director; records to be kept; securing information.

14. (a) The director may by general rule or by special notice require any taxpayer to submit copies or pertinent extracts of its federal income tax returns, or of any other tax return made to any agency of the federal government, or of this or any other state, or of any statement or registration made pursuant to any state or federal law pertaining to securities or securities exchange regulation.

(b) The director may require all taxpayers to keep such records as the director may prescribe, and the director may require the production of books, papers, documents and other data, to provide or secure information pertinent to the determination of the tax hereunder and the

enforcement and collection thereof. The director may, also, by general rule or by special notice require any taxpayer to make and file information returns, under oath, of facts pertinent to the determination of the tax or liability for tax hereunder, pursuant to such regulations, at such times and in such form and manner and to such extent as the director may prescribe pursuant to law.

(c) Each taxpayer filing a return that is a member of an affiliated group or a controlled group pursuant to section 1504 or 1563 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.1504 or 1563 shall, upon the request of the director and 90 days' notice thereof, disclose in its return for the privilege period the amount of all inter-member costs or expenses, including but not limited to management fees, rents, and other services, for the privilege period. If the taxpayer acquires products or services from another member of its affiliated group or controlled group, which it re-sells or otherwise uses to generate revenue, the taxpayer shall, upon the request of the director and 90 days' notice thereof, disclose the amount of revenue generated from those products or services. The director shall promulgate rules and procedures for the manner of disclosure. A failure to file such a disclosure shall be deemed the filing of an incomplete tax return, subject to the penalties of the State Uniform Tax Procedure Law, R.S.54:48-1 et seq.

C.54:10A-15.11 Tax payment by certain partnerships; definitions.

12. a. A partnership that is not a qualified investment partnership and that is not listed on a United States national stock exchange shall, on or before the 15th day of the fourth month succeeding the close of each privilege period, remit a payment of tax. The amount of tax shall be equal to the sum of: all of the share of the entire net income of the partnership for that privilege period of all nonresident noncorporate partners, multiplied by an allocation factor determined, pursuant to section 6 of P.L.1945, c.162 (C.54:10A-6), based on the allocation fractions of the partnership for that privilege period, and multiplied by.0637 plus all of the share of the entire net income of the partnership for that privilege period of all nonresident corporate partners, multiplied by an allocation factor determined, pursuant to section 6 of P.L.1945, c.162 (C.54:10A-6), based on the allocation fractions of the partnership for that privilege period, and multiplied by.09.

b. An amount of tax paid by a partnership pursuant to subsection a. of this section shall be credited to accounts of its nonresident partners in proportion to each nonresident partner's share of allocated entire net income and the multiplier rate for that partner class under subsection a. of this section as of the date of its receipt by the director, and each amount of tax so credited shall be deemed to have been paid by the respective partner in respect of the privilege period or taxable year of the partner.

c. For the purposes of this section:

"Nonresident noncorporate partner" means, an individual, an estate or a trust subject to taxation pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., that is not a resident taxpayer or a resident estate or trust under that act;

"Nonresident corporate partner" means a partner that is not an individual, an estate or a trust subject to taxation pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., that is not a corporation exempt from tax pursuant to section 3 of P.L.1945, c.162 (C.54:10A-3), and that does not maintain a regular place of business in this State other than a statutory office; and

"Partner" means an owner of an interest in the partnership, in whatever manner that owner and ownership interest are designated.

13. Section 15 of P.L.1945, c.162 (C.54:10A-15) is amended to read as follows:

C.54:10A-15 Annual tax payable; manner of payment.

15. The tax imposed by this act shall be due and payable annually hereafter, commencing with the calendar year 1959, in the manner provided under subsection (a), (b) or (c) of this section, whichever shall be applicable.

(a) Every taxpayer shall annually pay a franchise tax, with respect to all or any part of each of its fiscal or calendar accounting years beginning after January 1, 1959, to be computed as

herein provided, for such fiscal or calendar accounting year or part thereof, on a report which shall be filed on or before April 15 next succeeding the close of each such accounting year, or, if any such fiscal year ends after the last day of December and prior to July 1, on or before the fifteenth day of the fourth month after the close of such fiscal year, and the full amount of the tax hereunder shall be due and payable on or before the date prescribed herein for the filing of the return.

(b) Every taxpayer shall pay a like franchise tax with respect to all or any part of the period beginning January 1, 1959 and extending through any subsequent part of its first fiscal or calendar accounting year ending after said date. Such tax shall be computed as herein provided, for each and every fiscal or calendar accounting year or part thereof begun not earlier than July 2, 1957 and ending not later than December 31, 1959 on the basis of which a franchise tax has not accrued under this act prior to January 1, 1959. The tax imposed pursuant to this subsection shall be deemed a single tax for such period but shall be computed separately with respect to each such fiscal or calendar accounting year or part thereof on the basis of which a franchise tax has not previously accrued as aforesaid, on a report which shall be filed on or before April 15, next succeeding the close of each such accounting year, or, if any such fiscal year ends after the last day of December and prior to July 1, on or before the fifteenth day of the fourth month after the close of such fiscal year, and the full amount of the tax hereunder shall be due and payable on or before the date prescribed herein for the filing of the report.

(c) With respect to all or any part of each of its privilege periods ending after June 30, 1967, every taxpayer shall annually pay a franchise tax on a report which shall be filed on or before the fifteenth day of the fourth month after the close of such privilege period, or part thereof, and the full amount of the tax hereunder shall be due and payable on or before the date prescribed herein for the filing of the return.

(d) With respect to its fiscal or calendar accounting years ending after February 29, 1968 and prior to March 1, 1969, every taxpayer shall pay as a partial payment of franchise tax in addition to the tax payable under subsection (c) of this section, an amount equal to one-quarter of the tax payable under said subsection (c). With respect to each of its fiscal or calendar accounting years ending after February 28, 1969, every taxpayer shall annually pay as a partial payment of franchise tax in addition to the tax payable under subsection (c) of this section, an amount equal to one-half of the tax payable under said subsection (c). In the calculation of the tax pertaining to each succeeding accounting period, due in accordance with subsection (c) hereof, every taxpayer shall be entitled to a credit in the amount of the tax paid under this subsection (d) as a partial payment and shall be entitled to the return of any amount so paid which shall be found in excess of the total amount payable in accordance with said subsection (c) and this subsection (d).

(e) With respect to its fiscal or calendar accounting years ending on or after June 30, 1974, every taxpayer shall annually pay as a partial payment of franchise tax in addition to the tax payable under subsection (c) of this section, an amount equal to 60% of the tax payable under said subsection (c). In the calculation of the tax pertaining to each succeeding accounting period, due in accordance with subsection (c) hereof, every taxpayer shall be entitled to a credit in the amount of the tax paid under this subsection (e) as a partial payment and shall be entitled to the return of any amount so paid which shall be found to be in excess of the total amount payable in accordance with said subsection (c) and this subsection (e).

(f) With respect to its privilege periods ending on or after December 31, 1984, in addition to the tax payable under subsection (c) of this section, every taxpayer, except a taxpayer with gross receipts of $50,000,000 or more for the prior privilege period, which shall make installment payments pursuant to subsection (g) of this section, shall make installment payments of its franchise tax at the following times and in the following amounts of its estimated tax for its current fiscal or calendar accounting year:

(1) 25% thereof paid on or before the fifteenth day of the fourth month thereof;

(2) 25% thereof paid on or before the fifteenth day of the sixth month thereof;

(3) 25% thereof paid on or before the fifteenth day of the ninth month thereof; and

(4) the balance thereof paid on or before the fifteenth day of the twelfth month thereof.

(g) With respect to its privilege periods beginning on or after January 1, 2003, in addition

to the tax payable under subsection (c) of this section, every taxpayer with gross receipts of $50,000,000 or more for the prior privilege period shall make installment payments of its franchise tax at the following times and in the following amounts of its estimated tax for its current privilege period:

(1) 25% thereof paid on or before the fifteenth day of the fourth month thereof;

(2) 50% thereof paid on or before the fifteenth day of the sixth month thereof; and

(3) the balance thereof paid on or before the fifteenth day of the twelfth month thereof.

(h) In the calculation of the tax due in accordance with subsection (c) hereof, a taxpayer shall be entitled to a credit in the amount of the tax paid under subsection (f) or subsection (g) of this section as a partial payment and shall be entitled to the return of any amount so paid which is in excess of the total amount payable in accordance with subsection (c) and this subsection.

(i) For the purpose of this act, every taxpayer shall use the same calendar or fiscal year upon which it reports to the United States Treasury Department for Federal Income Tax purposes.

14. Section 18 of P.L.1945, c.162 (C.54:10A-18) is amended to read as follows:

C.54:10A-18 Forms; certification; S corporation, professional service corporation returns.

18. a. The director shall design a form of return and forms for such additional statements or schedules as the director may require to be filed therewith. Such forms shall provide for the setting forth of such facts as the director may deem necessary for the proper enforcement of this act. The director shall cause a supply thereof to be printed and shall furnish appropriate blank forms to each taxpayer upon application or otherwise as he may deem necessary. Failure to receive a form shall not relieve any taxpayer from the obligation to file a return under the provisions of this act. Each such return shall have annexed thereto a certification by the president, vice-president, comptroller, secretary, treasurer, assistant treasurer, accounting officer of the taxpayer or any other officer of the taxpayer duly authorized so to act to the effect that the statements contained therein are true. The fact that an individual's name is signed on a certification of the report shall be prima facie evidence that such individual is authorized to sign and certify the report on behalf of the corporation. In the case of a corporation in liquidation or in the hands of a receiver or trustee, certification shall be made by the person responsible for the conduct of the affairs of such corporation.

b. The return of an S corporation shall, in addition to any information set forth pursuant to subsection a. of this section, set forth with respect to each shareholder: the shareholder's name, address and federal taxpayer identification number (social security number or employer identification number); whether the shareholder is a resident of this State; whether the shareholder has filed a consent to jurisdictional requirements pursuant to section 3 or section 4 of P.L.1993, c.173 (C.54:10A-5.22 or C.54:10A-5.23); the allocation factor determined pursuant to sections 6 through 10 of P.L.1945, c.162 (C.54:10A-6 through 54:10A-10); the amount of any distribution made to the shareholder, including any amount paid on behalf of the shareholder pursuant to subsection c. or d. of section 4 of P.L.1993, c.173 (C.54:10A-5.23); the balance of the accumulated earnings and profits account; the balance of the accumulated adjustments account described in section 16 of P.L.1993, c.173 (C.54A:5-14), which account the corporation shall maintain; and such other information as the director may prescribe by regulation. The S corporation shall, on or before the day on which such return is required to be filed, furnish to each person who was a shareholder during the privilege period a copy of such information shown on the return as the director may by regulation prescribe.

c. (1) The return of a taxpayer that is a professional corporation organized pursuant to P.L.1969, c. 232 (C.14A:17-1 et seq.) or a similar corporation for profit organized for the purpose of rendering professional services under the laws of another state, shall in addition to any information set forth pursuant to subsection a. of this section, set forth the name, address and federal taxpayer identification number (social security number or employer identification number) of each licensed professional of the corporation.

(2) Each professional corporation organized pursuant to P.L.1969, c.232 (C.14A:17-1 et seq.) or similar corporation for profit organized for the purpose of rendering professional services under the laws of another state that has more than two licensed professionals shall at the time such return is required to be filed make a payment of a filing fee of $150 for each

licensed professional of the corporation, up to a maximum of $250,000.

(3) Each professional corporation or similar corporation for profit organized under the laws of another state required to make a payment pursuant to paragraph (2) of this subsection shall also make, at the same time as making its payment pursuant to paragraph (2) of this subsection, an installment payment of its filing fee for the succeeding return period in an amount equal to 50% of the amount required to be paid pursuant to paragraph (2). The amount of the installment payment shall be credited against the amount of the filing fee due for the succeeding return period, or, if the amount of the installment payment exceeds the amount of the filing fee due for the succeeding return period, successive return periods.

(4) Notwithstanding the provisions of R.S.54:48-2 and R.S.54:48-4 to the contrary, the fee required pursuant to paragraph (2) of this subsection and the installment payment required pursuant to paragraph (3) of this subsection shall, for purposes of administration, be payments to which the provisions of the State Uniform Tax Procedure Law, R.S.54:28-1 et seq., shall be applicable and the collection thereof may be enforced by the director in the manner therein provided.

15. Section 10 of P.L.1947, c.50 (C.54:10A-19.1) is amended to read as follows:

C.54:10A-19.1 Examination of returns, assessment.

10. (a) (Deleted by amendment, P.L.1992, c.175).

(b) (Deleted by amendment, P.L.1992, c.175).

(c) (Deleted by amendment, P.L.1992, c.175).

(d) The examination of returns and the assessment of additional taxes, penalties and interest shall be as provided by the State Uniform Tax Procedure Law, R.S.54:48-1 et seq., except as otherwise provided.

(e) The filing of a complaint by a taxpayer in the tax court shall suspend the running of the statute of limitations for the contested issue or issues for all subsequent privilege periods.

16. Notwithstanding any other provision of law, no interest or penalty shall be assessed against any taxpayer for underpayment of installment payments of its estimated tax due and payable after December 31, 2001 and before June 16, 2002, if, and only to the extent, the underpayment of estimated tax is the result of the temporary suspension of the deduction for net operating loss carryovers provided in section 4 of P.L.1945, c.162 (C.54:10A-4) as amended in section 3 of P.L.2002, c. (now pending before the Legislature as this bill) or subsection c. of section 1 of P.L.1997, c.350 (C.54:10A-4.3).

17. a. Notwithstanding the limitation of the application of subsection (g) of section 5 of P.L.1945, c.162 (C.54:10A-5) made pursuant to section 6 of P.L.2002, c.40, that limitation shall not affect any obligation, lien or duty to make installment payments and pay interest or penalties which have accrued or may accrue by virtue of any duty to make installment payments pursuant to the provisions of section 5 of P.L.2001, c.136 (C.54:10A-15.8) prior to the limitation of the application of subsection (g) of section 5 of P.L.1945, c.162 (C.54:10A-5) made pursuant to section 6 of P.L.2002, c.40; and provided that all estimated payments which would have been due and payable prior to the enactment of P.L.2002, c.40 shall be due and payable as if the limitation were not in effect; and provided that this limitation shall not affect the legal authority of the State to audit records and assess and collect installment payments which may be due, together with such interest and penalties as have accrued or would have accrued thereon and shall not affect any determination of, or affect any proceeding for, the enforcement thereof.

b. Notwithstanding the provisions of section 5 of P.L.2001, c.136 (C.54:10A-15.8) to the contrary, any amount of tax paid pursuant to subsection a. of that section for privilege periods beginning on or after January 1, 2002 shall be credited against the tax paid pursuant to section 12 of P.L.2002, c.40 (C.54:10A-15.11).

18. Section 2 of P.L.1993, c.170 (C.54:10A-5.5) is amended to read as follows:

C.54:10A-5.5 Definitions relative to new jobs investment tax credit.

2. As used in this act:

"Business relocation or expansion or investment" means capital investment in a new or expanded business facility in this State.

"Business facility" means any factory, mill, plant, refinery, warehouse, building, complex of buildings or structural components of buildings, and all machinery, equipment and personal property located within this State, used in connection with the operation of the business of a corporation that is subject to the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), and all facility preparation and start-up costs of the taxpayer for the business facility which it capitalizes for federal income tax purposes.

"Compensation" means wages, salaries, commissions or any other form of remuneration paid to employees for personal services.

"Controlled group" means one or more chains of corporations connected through stock ownership with a common parent corporation if stock possessing at least 50% of the voting power of all classes of stock of each of the corporations is owned directly or indirectly by one or more of the corporations; and the common parent owns directly stock possessing at least 50% of the voting power of all classes of stock of at least one of the other corporations.

"Director" means the Director of the Division of Taxation in the Department of the Treasury.

"Expanded business facility" means any business facility, other than a new business facility, resulting from acquisition, construction, reconstruction, installation or erection of improvements or additions to existing property if such improvements or additions are purchased on or after the operative date of this act, but only to the extent of a taxpayer's qualified investment in such improvements or additions.

"New business facility" means a business facility which:

a. is employed by a taxpayer in the conduct of a business which is or will be taxable under P.L.1945, c.162 (C.54:10A-1 et seq.). Such facility shall not be considered a new business facility in the hands of a taxpayer if the taxpayer's only activity with respect to such facility is to lease it to another person;

b. is purchased by a taxpayer and is placed in service or use on or after the operative date of this act;

c. was not purchased by a taxpayer from a related person. The director may waive this requirement if the facility was acquired from a related person for its fair market value and the acquisition was not tax motivated;

d. was not in service or use during the 90-day period immediately prior to transfer of the title to the facility, provided that this restriction for the 90-day period may be waived by the director if the director determines that individuals employed at the facility may be considered as "new employees" as defined in this section.

"New employee" means an individual residing and domiciled in this State, hired by a taxpayer to fill a position or a job in this State which previously did not exist in the taxpayer's business enterprise in this State prior to the date on which the taxpayer's qualified investment is placed in service or use in this State provided that:

a. the individual's duties in connection with the operation of the business facility are on a regular, full-time and permanent basis or regular part-time and permanent basis;

b. the individual is not a related individual as defined in subsection (i) of section 51 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.51, or does not own 10% or more of the business with such ownership interest to be determined under the rules set forth in section 267 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.267;

c. the individual is not an individual who worked for the taxpayer during the six-month period ending on the date the taxpayer's qualified investment is placed in service or use and is rehired by the taxpayer during the six-month period beginning on the date the taxpayer's qualified investment is placed in service or use in this State; and

d. the individual is not an employee for whom the taxpayer is allowed a credit pursuant to section 19 of P.L.1983, c.303 (C.52:27H-78) or section 12 of P.L.1985, c.227 (C.55:19-13).

As used in this definition: "full-time" means employment for at least 140 hours per month at a wage not less than the State or federal minimum wage, if either minimum wage provision is

applicable to the business and "permanent basis" does not include employment that is temporary or seasonal and therefore the compensation paid to temporary or seasonal employees will not be considered for purposes of sections 4 and 6 of this act; and "part-time" means customarily performing such duties at least 20 hours per week for at least six months during the tax year. In no event shall the number of new employees directly attributable to the qualified investment for the purpose of the credit allowed pursuant to this act exceed the total increase in the taxpayer's average employment in this State for the tax year over the average employment in this State for the previous tax year and in no event shall the number of new employees directly attributable to the qualified investment for the purpose of the credit allowed pursuant to this act exceed one-half of the average employment in this State for the tax year; and provided, that the director may require that the net increase in the taxpayer's employment in this State be determined and certified for the taxpayer's controlled group.

Provided further, however, that individuals filling jobs saved as a direct result of the taxpayer's qualified investment in property purchased for business relocation or expansion on or after the operative date of this act may be treated as new employees filling new jobs if the taxpayer certifies the material facts to the director and the director expressly finds that: but for the new employer purchasing the assets of a business in bankruptcy under chapter 7 or 11 of the United States Bankruptcy Code and such new employer making qualified investment in property purchased for business relocation or expansion, the assets would have been sold by the United States bankruptcy court in a liquidation sale and the jobs so saved would have been lost; or but for the taxpayer's qualified investment in property purchased for business relocation or expansion in this State, the business facility in this State would have closed and the employees located at the facility would have lost their jobs; provided that the director shall not make this certification unless the director finds that the business is insolvent as defined in paragraph (32) of 11 U.S.C. s.101 or that the business facility was destroyed in whole or in significant part by fire, flood or act of God.

"New job" means a job which did not exist in the business of the taxpayer in this State prior to the taxpayer's qualified investment being made, and which is filled by a new employee.

"Partnership" means a syndicate, group, pool, joint venture or other unincorporated organization through or by means of which any business, financial operation or venture is carried on, and which is not a trust or estate, a corporation or a sole proprietorship. The term "partner" includes a member in such a syndicate, group, pool, joint venture or organization.

"Property purchased for business relocation or expansion" means improvements to real property and tangible personal property, but only if that improvement or personal property was constructed or purchased and placed in service or use by the taxpayer, for use as a component part of a new or expanded business facility located in this State.

a. Property purchased for business relocation or expansion shall include only:

(1) improvements to real property placed in service or use on or after the operative date of this act by the taxpayer;

(2) tangible personal property placed in service or use by the taxpayer on or after the operative date of this act, with respect to which depreciation, or amortization in lieu of depreciation, is allowable in determining the corporation business tax liability of the taxpayer under P.L.1945, c.162, and which has a remaining recovery period of three or more years at the time the property is placed in service or use in this State; or

(3) tangible personal property owned and used by the taxpayer at a business location outside this State which is moved into this State on or after the operative date of this act, for use as a component part of a new or expanded business facility located in this State; provided that the property is depreciable or amortizable personal property for income tax purposes, and has a remaining recovery period of three or more years at the time the property is placed in service or use in this State.

b. Property purchased for business relocation or expansion shall not include:

(1) Repair costs, including materials used in the repair, unless for federal income tax purposes, the cost of the repair must be capitalized and not expensed;

(2) Airplanes;

(3) Property which is primarily used outside this State with that use being determined based

upon the amount of time the property is actually used both within and without this State;

(4) Property which is acquired incident to the purchase of the stock or assets of the seller unless for good cause shown, the director consents to waiving this disqualification; or

(5) Property purchased on or after the operative date of this act, unless pursuant to a written contract to purchase executed prior to the operative date of this act, the cost or consideration for which cannot be quantified with any reasonable degree of accuracy at the time such property is placed in service or use; provided that if the contract of purchase specifies a minimum purchase price the amount thereof shall be used to determine the qualified investment in such property under section 5 of this act if the property otherwise qualifies as property purchased for business relocation or expansion.

c. Property shall be deemed to have been purchased prior to a specified date only if:

(1) the physical construction, reconstruction or erection of the property was begun prior to the specified date, or such property was constructed, reconstructed, erected or acquired pursuant to a written contract as existing and binding on the purchase prior to the specified date; or

(2) the machinery or equipment was owned by the taxpayer prior to the specified date, or was acquired by the taxpayer pursuant to a binding purchase contract which was in effect prior to the specified date.

"Purchase" means any acquisition of property, including an acquisition pursuant to a lease, but only if:

a. the property is not acquired from a person whose relationship to the person acquiring it would result in the disallowance of deductions under section 267 or subsection (b) of section 707 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.267 or s.707;

b. the property is not acquired by one member of a controlled group from another member of the same controlled group. The director may waive this requirement if the property was acquired from a related party for its then fair market value; and

c. the basis of the property for federal income tax purposes, in the hands of the person acquiring it, is not determined:

(1) in whole or in part by reference to the federal adjusted basis of such property in the hands of the person from whom it was acquired; or

(2) under subsection (e) of section 1014 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.1014.

"Related person" means:

a. a corporation, partnership, association or trust controlled by the taxpayer;

b. an individual, corporation, partnership, association or trust that is in control of the taxpayer;

c. a corporation, partnership, association or trust controlled by an individual, corporation, partnership, association or trust that is in control of the taxpayer; or

d. a member of the same controlled group as the taxpayer.

As used in the definition of related person and as is applicable to the definitions of purchase and small or mid-size business taxpayer, "control," with respect to a corporation, means ownership, directly or indirectly, of stock possessing 50% or more of the total combined voting power of all classes of the stock of the corporation entitled to vote; "control," with respect to a trust, means ownership, directly or indirectly, of 50% or more of the beneficial interest in the principal or income of the trust. The ownership of stock in a corporation, of a capital or profits interest in a partnership or association or of a beneficial interest in a trust shall be determined in accordance with the rules for constructive ownership of stock provided in subsection (c) of section 267 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.267, other than paragraph (3) of subsection (c) of that section.

"Small or mid-size business taxpayer" means a taxpayer that has an annual payroll, as calculated pursuant to section 6 of P.L.1945, c.162 (C.54:10A-6), of $5,000,000 or less and annual gross receipts, as calculated pursuant to section 6 of P.L.1945, c.162 (C.54:10A-6), of not more than $10,000,000 for the tax year in which property purchased for business relocation or expansion is placed in service or use by the taxpayer; provided that beginning with tax years commencing on and after January 1 next following the operative date of P.L.2002, c.40 the director shall prescribe the amount of annual payroll and annual gross receipts which shall apply

by increasing each such amount hereinabove by an annual inflation adjustment factor, which prescribed amount shall be rounded to the next lowest multiple of $50. "Annual inflation adjustment factor" means the factor calculated by dividing the consumer price index for urban wage earners and clerical workers for the nation, as prepared by the United States Department of Labor for September of the calendar year prior to the calendar year in which the tax year begins, by that index for September of the calendar year two years prior to the calendar year in which the tax year begins. The annual payroll of a taxpayer shall include the employees of its domestic and foreign affiliates, whether employed on a full-time, part-time, temporary, or other basis, during the preceding 12 months. If a taxpayer has not been in existence for 12 months, the payroll of the taxpayer shall be divided by the number of weeks, including fractions of a week, that it has been in business, and the result multiplied by 52. That amount shall then be added to the 12-month payrolls of its domestic and foreign affiliates to determine the annual payroll of the taxpayer for purposes of this definition. The annual gross receipts of a taxpayer shall include the annual gross receipts of its foreign and domestic affiliates. The annual gross receipts of a taxpayer which has been in business for three or more complete tax years means the average of the annual gross receipts of the business for the last three tax years. For purposes of this definition, the gross receipts of the taxpayer includes receipts from sales of tangible personal property and services, interests, rents, royalties, fees, commissions and receipts from any other source, but less returns and allowances, sales of fixed assets, interaffiliated transactions between a business and its domestic and foreign affiliates, and taxes collected for remittance to a third party, as shown on its books for federal income tax purposes. The annual receipts of a taxpayer that has been in business for less than three complete tax years means its total receipts for the period it has been in business, divided by the number of weeks including fractions of a week that it has been in business, and multiplied by 52. "Affiliates" includes all concerns that are affiliates of each other when either directly or indirectly one concern controls the other or a third party or parties controls both. In determining whether concerns are independently owned and operated and whether or not affiliation exists, the director shall consider all appropriate factors, including common ownership, common management and contractual relationships. "Concern" means any business entity organized for profit (even if its ownership is in the hands of a nonprofit entity), having a place of business located in this State, and which makes a contribution to the economy of this State through payment of taxes, or the sale or use in this State of tangible personal property, or the procurement or providing of services in this State, or the hiring of employees who work in this State. "Concern" includes but is not limited to any person as defined in R.S.1:1-2.

"Tax year" means the fiscal or calendar accounting year of a taxpayer.

19. Section 3 of P.L.1993, c.170 (C.54:10A-5.6) is amended to read as follows:

C.54:10A-5.6 Determination of taxpayer credit allowed.

3. a. A taxpayer shall be allowed a credit against the portion of the tax imposed in section 5 of P.L.1945, c.162 (C.54:10A-5), that is attributable to and the direct consequence of the taxpayer's qualified investment in a new or expanded business facility in this State which results in the creation of at least five new jobs in the case of a small or mid-size business taxpayer, or at least 50 new jobs in the case of any other taxpayer, provided that the median compensation of all new jobs included in the taxpayer's determination of the new jobs factor shall not be less than $27,000 per year, provided that beginning with tax years commencing on and after January 1 next following the operative date of this act the director shall adjust the median annual compensation which shall apply as provided in subsection e. of this section. The amount of this credit shall be determined and applied as hereinafter provided.

b. The amount of the credit allowed shall be determined by multiplying the amount of the taxpayer's "qualified investment," determined under section 5 of this act, in "property purchased for business relocation or expansion" by the taxpayer's new jobs factor determined under section 6 of this act. The product of this calculation shall establish the maximum amount of credit allowed under this act due to the qualified investment.

c. The amount of credit allowed shall be taken over a five-year period, at the rate of

one-fifth of the amount thereof per tax year, beginning with the tax year in which the taxpayer places the qualified investment in service or use in this State.

d. For purposes of the credit allowed by this section, property shall be considered placed in service or use in the earlier of the following tax years:

(1) The tax year in which, under the taxpayer's depreciation practice, the period for depreciation with respect to such property begins; or

(2) The taxable year in which the property is placed in a condition or state of readiness and availability for a specifically assigned function.

e. Beginning with tax years commencing on and after January 1 next following the operative date of this act the director shall prescribe the annual median compensation of all new jobs included in the taxpayer's determination of new jobs factor by increasing the amount of median compensation set forth in subsection a. of this section by an annual inflation adjustment factor, which prescribed amount shall be rounded to the next lowest multiple of $50. "Annual inflation adjustment factor" means the factor calculated by dividing the consumer price index for urban wage earners and clerical workers for the nation, as prepared by the United States Department of Labor for September of the calendar year prior to the calendar year in which the tax year begins, by that index for September of the calendar year two years prior to the calendar year in which the tax year begins.

20. Section 6 of P.L.1993, c.170 (C.54:10A-5.9) is amended to read as follows:

C.54:10A-5.9 New jobs factor to determine amount of credit allowed.

6. a. The new jobs factor used to determine the amount of credit allowed under this act shall be based on the number of new jobs created in this State that are directly attributable to the qualified investment of the taxpayer.

b. (1) (a) For a taxpayer that is not a small or mid-size business taxpayer, if 50 new jobs are created and filled during the tax year in which the qualified investment is placed in service or use in this State, the applicable new jobs factor shall be 0.005. For each 50 additional new jobs over the initial 50, up to 1000 total new jobs, the applicable new jobs factor of 0.005 shall be increased by adding thereto 0.005, up to a maximum new jobs factor of 0.10.

(b) During each of the remaining four years of the five-year credit period, the taxpayer shall redetermine the new jobs factor for the tax year on the annual return based on the average number of new employees employed in new jobs during that tax year (determined on a monthly basis) created as the direct result of the taxpayer's qualified investment.

(2) (a) For a taxpayer that is a small or mid-size business taxpayer, if five new jobs are created and filled during the tax year in which the qualified investment is placed in service or use in this State, the applicable new jobs factor shall be 0.01. For each five additional new jobs over the initial five, up to 100 total new jobs, the applicable new jobs factor of 0.01 shall be increased by adding thereto 0.01, up to a maximum new jobs factor of 0.20.

(b) During each of the remaining four years of the five-year credit period, the taxpayer shall redetermine the new jobs factor for the tax year on the annual return based on the average number of new employees employed in new jobs during that tax year (determined on a monthly basis) created as the direct result of the taxpayer's qualified investment.

c. An employee's position shall be directly attributable to the qualified investment if:

(1) the employee's service is performed or the employee's base of operations is at the new or expanded business facility;

(2) the position did not exist prior to the construction, renovation, expansion or acquisition of the business facility and the making of the qualified investment; and

(3) but for the qualified investment, the position would not have existed.

d. With the annual corporation business tax return filed under P.L.1945, c.162, for each tax year during the five-year credit period for a qualified investment, the taxpayer shall certify:

(1) the new jobs factor for that tax year for the qualified investment;

(2) the amount of the credit allowed for that year for the qualified investment;

(3) that the qualified investment property continued to be used in the business, or if any of it was disposed of during the year, the date of disposition, and that such property was not

disposed of prior to expiration of its recovery period, as determined under section 5 of this act; and

(4) that the new jobs are directly attributable to the qualified investment, are filled by individuals who meet the definition of new employee, and the median annual compensation of all new employees is equal to or greater than the minimum median annual compensation required by section 3 of this act.

e. With the annual return for the corporation business tax imposed under P.L.1945, c.162, filed for the tax year in which the qualified investment is first placed in service or use in this State, the taxpayer shall estimate and certify the number of new jobs reasonably projected to be created by it in this State within the period prescribed in subsection g. of this section, that are, or will be directly attributable to the qualified investment of the taxpayer.

f. The hours of part-time employees shall be aggregated to determine the number of equivalent full-time employees for the purpose of determining the new jobs factor pursuant to subsection b. of this section but shall not be so aggregated for the purposes of subsection c. of this section.

g. With the annual return for the tax imposed under P.L.1945, c.162, filed for the third tax year in which the qualified investment is in service or use in this State, the taxpayer shall certify the actual number of new jobs created by it in this State, that are directly attributable to the qualified investment of the taxpayer.

(1) If the actual number of jobs created would result in a higher new jobs factor, the credit allowed under this act shall be redetermined and amended returns filed for the first and second tax years that the qualified investment was in service or use in this State.

(2) If the actual number of jobs created would result in a lower new jobs factor, the credit previously allowed under this act shall be redetermined and amended returns filed for the first and second tax years. Any additional taxes due under P.L.1945, c.162, shall be remitted with the amended returns filed with the director, together with any penalty and interest, for failure to pay any such tax when due as provided in the State Uniform Tax Procedure Law, R.S.54:48-1 et seq.

21. Section 8 of P.L.1993, c.170 (C.54:10A-5.11) is amended to read as follows:

C.54:10A-5.11 Disposal of property; treatment under act.

8. a. (1) Property of a small or mid-size business taxpayer shall not be treated as disposed of under section 7 of this act by reason of a mere change in the form of conducting the business as long as the property is retained in a business of a small or mid-size business taxpayer in this State, and the taxpayer retains a controlling interest in the successor business. In this event, the successor business shall be allowed to claim the amount of credit still available with respect to the new or expanded business facility or facilities transferred, and the small or mid-size business taxpayer-transferor shall not be required to redetermine the amount of credit allowed in earlier tax years.

(2) Property of a taxpayer that is not a small or mid-size business taxpayer shall not be treated as disposed of under section 7 of this act by reason of a mere change in the form of conducting the business as long as the property is retained in a business of a taxpayer in this State, and the taxpayer retains a controlling interest in the successor business. In this event, the successor business shall be allowed to claim the amount of credit still available with respect to the new or expanded business facility or facilities transferred, and the taxpayer-transferor shall not be required to redetermine the amount of credit allowed in earlier tax years.

b. (1) Property of a small or mid-size business taxpayer shall be treated as disposed of under section 7 of this act by reason of a change in the form of conducting the business if the property is not retained in a business of a small or mid-size business taxpayer in this State in which the small or mid-size business taxpayer retains a controlling interest.

(2) Property of a small or mid-size business taxpayer shall not be treated as disposed of under section 7 of this act by reason of any transfer or sale to a successor small or mid-size business taxpayer which continues to operate the new or expanded business facility in this State. Upon transfer or sale, the successor shall acquire the amount of credit that remains available

under this act for each subsequent tax year and the taxpayer-transferor shall not be required to redetermine the amount of credit allowed in earlier years.

(3) Property of a business that is not a small or mid-size business taxpayer shall not be treated as disposed of under section 7 of this act by reason of any transfer or sale to a successor taxpayer which continues to operate the new or expanded business facility in this State. Upon transfer or sale, the successor shall acquire the amount of credit that remains available under this act for each subsequent tax year and the taxpayer-transferor shall not be required to redetermine the amount of credit allowed in earlier years.

(4) Property of a small or mid-size business taxpayer shall be treated as disposed of under section 7 by reason of any transfer or sale to a successor that is not a small or mid-size business taxpayer, whether or not the successor continues to operate the business in this State. Upon such transfer or sale, the successor shall not acquire any amount of credit under this act and the taxpayer-transferor shall redetermine, as required by this act, the amount of credit allowed in earlier years.

22. N.J.S.54A:8-6 is amended to read as follows:

Requirements concerning returns, notices, records and statements.

54A:8-6. Requirements concerning returns, notices, records and statements. (a) General. The director may prescribe regulations as to the keeping of records, the content and form of returns and statements, and the filing of copies of federal income tax returns and determinations. The director may require any person, by regulation or notice served upon such person, to make such returns, render such statements, or keep such records, as the director may deem sufficient to show whether or not such person is liable under this act for tax or for collection of tax.

(b) Partnerships. (1) Each entity classified as a partnership for federal income tax purposes, including but not limited to a partnership, a limited liability partnership, or a limited liability company, having a resident owner of an interest in the entity or having any income derived from New Jersey sources, shall make a return for the taxable year setting forth all items of income, gain, loss and deduction and such other pertinent information as the director may by regulations and instructions prescribe. The director shall prescribe a State return form that, at a minimum, includes the name and address of each partner, member, or other owner of an interest in the entity however designated, of the entity for taxable years ending on or after December 31, 1994. Such return shall be filed on or before the fifteenth day of the fourth month following the close of each taxable year.

(2) (A) Each entity classified as a partnership for federal income tax purposes having any income derived from New Jersey sources, including but not limited to a partnership, a limited liability partnership, or a limited liability company, that has more than two owners shall at the prescribed time for making the return required under this subsection make a payment of a filing fee of $150 for each owner of an interest in the entity, up to a maximum of $250,000.

(B) Each entity required to make a payment pursuant to subparagraph (A) of this paragraph shall also make, at the same time as making its payment pursuant to subparagraph (A) of this paragraph, an installment payment of its filing fee for the succeeding return period in an amount equal to 50% of the amount required to be paid pursuant to subparagraph (A). The amount of the installment payment shall be credited against the amount of the filing fee due for the succeeding return period, or, if the amount of the installment payment exceeds the amount of the filing fee due for the succeeding return period, successive return periods.

(C) Notwithstanding the provisions of R.S.54:48-2 and R.S.54:48-4 to the contrary, the fee required pursuant to subparagraph (A) of this paragraph and the installment payment required pursuant to subparagraph (B) of this paragraph shall, for purposes of administration, be payments to which the provisions of the State Uniform Tax Procedure Law, R.S.54:28-1 et seq., shall be applicable and the collection thereof may be enforced by the director in the manner therein provided.

(3) Each entity required to file a return under this subsection for any taxable year shall, on or before the day on which the return for the taxable year is required to be filed, furnish to each person who is a partner or other owner of an interest in the entity however designated, or who

holds an interest in such entity as a nominee for another person at any time during that taxable year a copy of such information required to be shown on such return as the director may prescribe.

(4) For the purposes of this subsection, "taxable year" means a year or period which would be a taxable year of the partnership if it were subject to tax under this act.

(c) Information at source. The director may prescribe regulations and instructions requiring returns of information to be made and filed on or before February 15 of each year as to the payment or crediting in any calendar year of amounts of $100.00 or more to any taxpayer under this act. Such returns may be required of any person, including lessees or mortgagors of real or personal property, fiduciaries, employers, and all officers and employees of this State, or of any municipal corporation or political subdivision of this State, having the control, receipt, custody, disposal or payment of interest, rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments or other fixed or determinable gains, profits or income, except interest coupons payable to bearer. A duplicate of the statement as to tax withheld on wages, required to be furnished by an employer to an employee, shall constitute the return of information required to be made under this section with respect to such wages.

(d) Notice of qualification as receiver, et cetera. Every receiver, trustee in bankruptcy, assignee for benefit of creditors, or other like fiduciary shall give notice of his qualification as such to the director, as may be required by regulation.

Repealer.

23. The following are repealed:

Sections 1 through 16, 18 and 19 of P.L.1973, c.31 (C.54:10D-1 et seq.); and

Sections 1 through 19 and 21 through 24 of P.L.1973, c.170 (C.54:10E-1 through 54:10E-19 and C.54:10E-21 through 54:10E-24).

24. a. Notwithstanding the repeal of the "Savings Institutions Tax Act," P.L.1973, c.31 (C.54:10D-1 et seq.), and the Corporation Income Tax Act (1972), P.L.1973, c.170 (C.54:10E-1 et seq.), pursuant to section 23 of P.L.2002, c.40, their repeal shall not affect any obligation, lien or duty to pay taxes, interest or penalties which have accrued or may accrue by virtue of any taxes imposed pursuant to the provisions of the laws repealed by section 23 of P.L.2002, c.40, or which may be imposed with respect to any redetermination, correction, recomputation or deficiency assessment; and provided that all taxes and returns which would have been due and payable for the tax period ending prior to the enactment of P.L.2002, c.40 shall be due and payable as if the laws were in effect; and provided that these repeals shall not affect the legal authority of the State to audit records and assess and collect taxes due or which may be due, together with such interest and penalties as have accrued or would have accrued thereon under the provisions of the law repealed; and provided that the repeal by section 23 of P.L.2002, c.40, shall not affect any determination of, or affect any proceeding for, the enforcement thereof.

b. In the case of a taxpayer that was a taxpayer as defined pursuant to P.L.1973, c.170 (C.54:10E-1 et seq.), for the fiscal or calendar accounting period next ending after the effective date of this section, "basis of the facts shown on the return of the taxpayer for, and the law applicable to, the preceding fiscal or calendar accounting year" shall, for the purposes of paragraph (1) of subsection d. of section 5 of P.L.1981, c.184 (C.54:10A-15.4), for the fiscal or calendar year next beginning after the effective date of this act, be deemed to be the basis of the facts shown on the return of the taxpayer for, and the law applicable to, the preceding fiscal or calendar accounting year pursuant to P.L.1973, c.170 (C.54:10E-1 et seq.).

c. In the case of a taxpayer that was a taxpayer as defined pursuant to P.L.1973, c.31 (C.54:10D-1 et seq.), for the fiscal or calendar accounting period next ending after the effective date of this section, "basis of the facts shown on the return of the taxpayer for, and the law applicable to, the preceding fiscal or calendar accounting year" shall, for the purposes of paragraph (1) of subsection d. of section 5 of P.L.1981, c.184 (C.54:10A-15.4), for the fiscal or calendar year next beginning after the effective date of this act, be deemed to be the basis of the facts shown on the return of the taxpayer for, and the law applicable to, the preceding fiscal or calendar accounting year pursuant to P.L.1973, c.31 (C.54:10D-1 et seq.).

25. a. The director shall adopt regulations in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), and prescribe forms to administer the provisions of this act.

b. Notwithstanding the provisions of P.L.1968, c.410 to the contrary, the director may adopt immediately upon filing with the Office of Administrative Law, such regulations as the director deems necessary to implement the provisions of this act, which regulations shall be effective for a period not to exceed 180 days from the date of the filing. The regulations may thereafter be amended, adopted or readopted by the director as the director deems necessary in accordance with the requirements of P.L.1968, c.410.

C.54:10A-6.2 Determination of receipts from services, alternative minimum assessment; definitions.

26. a. (1) For the purposes of determining the receipts from services performed within the State under paragraph (4) of subsection (B) of section 6 of P.L.1945, c.162 (C.54:10A-6), and for the purposes of paragraph (3) of the definition of New Jersey gross receipts pursuant to section 7 of P.L.2002, c.40 (C.54:10A-5a), the receipts from the services of a registered securities or commodities broker or dealer and the receipts from asset management services shall be from services performed within the State if the customer is located within this State.

b. For purposes of this subsection:

"Asset management services" means the rendering of investment advice, making determinations as to when sales and purchases are to be made, or the selling or purchasing of assets, and related activities;

"Securities" has the meaning provided by paragraph (2) of subsection (c) of section 475 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.475;

"Commodities" has the meaning provided by paragraph (2) of subsection (e) of section 475 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.475; and

"Registered securities or commodities broker or dealer" means a broker or dealer registered as such by the federal Securities and Exchange Commission or the federal Commodities Futures Trading Commission.

C.54:10A-4.5 Carryover of net operating loss for privilege period as deduction.

27. Notwithstanding any provision of subsection (k) of section 4 of P.L.1945, c.162 (C.54:10A-4) or of the federal Internal Revenue Code, including but not limited to 26 U.S.C. s.381 or any successor or equivalent provision, that permits a corporation to use the net operating losses of another for federal income tax purposes following certain transactions, including but not limited to those qualifying as reorganizations under the provisions of subparagraph (A), (C), (D), (F) or (G) of paragraph (1) of subsection (a) of section 368 of the federal Internal Revenue Code, 26 U.S.C. s.368, a net operating loss for a privilege period ending after June 30, 1984, may be carried over and allowed as a deduction only by the corporation that sustained the loss; provided however, that in the case of a merger of two or more corporations pursuant to statute of this State or any other jurisdiction, the net operating loss may be carried over only by the corporation that sustained the loss and that is also the surviving corporation following the merger. The net operating loss may not be carried over by a taxpayer that changes its state of incorporation. No net operating loss shall be allowed as a deduction by a corporation resulting from a consolidation pursuant to statute of this State or of any other jurisdiction.

28. Notwithstanding the provisions of section 3 of P.L.1981, c.184 (C.54:10A-15.2) and subsections b. and d. of section 5 of P.L.1981, c.184 (C.54:10A-15.4) to the contrary, the amount of underpayment of the installment payment by the taxpayer for the payment required pursuant to paragraph (4) of subsection (f) of section 15 of P.L.1945, c.162 (C.54:10A-15) for the privilege period of the taxpayer beginning in calendar year 2002 shall be equal to the excess of the amount of the installment payment which would be required to be paid if the installment payment were to equal 25% of the tax computed at the rates applicable to the current privilege period on the basis of the facts to be shown on the return of the taxpayer for, and the law

applicable to, the current privilege period over the amount, if any, of the installment paid on or before the last date prescribed for that payment.

C.54:10A-5b Credit for air carrier, certain circumstances.

29. An air carrier, within the meaning given that term pursuant to 49 U.S.C. s.40102, that contributes more than 25% of the total amortization for capital improvement projects at Newark International Airport paid by air carriers to the Port Authority of New York and New Jersey through rates and charges for a privilege period shall be allowed a credit against the alternative minimum assessment imposed pursuant to section 7 of P.L.2002, c.40 (C.54:10A-5a) for the privilege period in an amount equal to 50% of the portion of the total amortization for capital improvement projects at Newark International Airport paid by the air carrier to the Port Authority of New York and New Jersey through rates and charges for the privilege period; provided however, that the amount of the credit applied under this section against the alternative minimum assessment for a privilege period shall not exceed 50% of the alternative minimum assessment otherwise due and shall not reduce the alternative minimum assessment to an amount less than the statutory minimum provided in subsection (e) of section 5 of P.L.1945, c.162.

C.54:10A-18.1 Consolidated return filed by air carrier.

30. An air carrier, within the meaning given that term pursuant to 49 U.S.C. s.40102, may elect to file a consolidated return with respect to the corporate income tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) of the entire operation of the affiliated group, including its own operations and income. If such election is made, the group will be considered a single taxpayer and, for the purposes of section 5 of P.L.1945, c.162 (C.54:10A-5), the amount of the taxpayer's entire net income shall be deemed prima facie to be equal in amount to the taxable income, before net operating loss deduction and special deductions, that the taxpayer is required to report or, if the taxpayer is classified as a partnership for federal tax purposes, would otherwise be required to report, to the United States Treasury Department for the purpose of computing its consolidated federal taxable income.

C.54:10A-41 Corporation Business Tax Study Commission.

31. a. There is established the Corporation Business Tax Study Commission, in but not of the Department of the Treasury, which shall conduct a continuous study and evaluation of the corporate tax law reforms adopted pursuant to P.L.2002, c.40, with specific reference to:

(1) whether the corporation business tax burden is fairly and equitably borne and distributed among corporations that are subject to the tax;

(2) whether profitable corporations doing business in New Jersey can avoid paying their fair share of taxes by using tax minimization or avoidance strategies that may include cross-border tax avoidance such as isolation of nexus-creating activities or the transfer of certain income to holding companies in low tax or tax haven jurisdictions, intragroup corporate transfer pricing techniques, use of special deductions or exclusions that manipulate income and costs between parent-subsidiary or affiliated companies that benefit large or multinational or multistate corporations over smaller businesses operating wholly within New Jersey;

(3) whether, without reducing anticipated revenues from that tax, the tax burden could be more fairly and equitably borne and distributed;

(4) whether the revenue and distributional impacts of the changes to the Corporation Business Tax Act (1945) enacted pursuant to P.L.2002, c.40 yield the recurring revenue goals that New Jersey must achieve to bring long-term structural balance to State finances; and

(5) whether New Jersey and its corporation business taxpayers would be better served by the use of a combined taxation under the unitary business concept.

b. The commission shall be composed of nine members as follows:

(1) two members, one appointed by each of the Senate Presidents;

(2) two members appointed by the Speaker of the General Assembly; and

(3) five members appointed by the Governor.

Each member shall be a resident of the State who has knowledge and expertise in the area of corporation income tax. Of the members appointed by the Governor, one shall be a member of

the academic community, one shall be a certified public accountant, one shall be a member of the State tax bar, one shall represent large businesses, and one shall represent small businesses. The members appointed by the Speaker of the General Assembly shall not be members of the same political party, the members appointed by the Presidents of the Senate shall not be members of the same political party, and no more than three of the members appointed by the Governor shall be of the same political party.

c. Vacancies in the membership of the commission shall be filled in the same manner as the original appointments were made.

d. The members of the commission shall be appointed and shall hold their initial organizational meeting within 60 days after the enactment of this act. The members shall elect one of the members to serve as chair and the chair may appoint a secretary, who need not be a member of the commission. The members of the commission shall serve without compensation, but shall be eligible for reimbursement for necessary and reasonable expenses incurred in the performance of their official duties within the limits of funds made available to the commission for its purposes.

e. The commission shall meet at the call of the chair. The commission shall hold at least three public hearings and elicit testimony from the public at such times and places as the chair shall designate. A meeting of the commission shall be called upon the request of five of the commission's members and five members of the commission shall constitute a quorum at any meeting thereof.

f. The commission may employ and fix the compensation of an executive director, whose employment shall be in the unclassified service of the State. The executive director shall serve as secretary to the commission and carry out its policies under the direction of the chair.

g. The commission shall be entitled to call to its assistance and avail itself of the services of any State, county, or municipal department, board, bureau, commission or agency, as it may require and as may be available for its purposes, including the Director of the Division of Taxation, in the Department of the Treasury, who shall publish to the commission to the fullest extent possible under the confidentiality restrictions of R.S.54:50-9 such statistics, so classified as to prevent the identification of a particular report and the items thereof, as the commission may request, and the commission may employ stenographic and clerical assistance and incur traveling and other miscellaneous expenses as may be necessary in order to perform its duties, within the limits of funds appropriated or otherwise made available to it for its purposes.

h. The commission may meet and hold hearings at the places it designates during the sessions or recesses of the Legislature. The commission may issue interim reports and shall produce and provide a final report with findings and recommendations to the Governor and the Legislature, along with any legislative bills it desires to recommend for adoption by the Legislature, no later than December 30, 2003.

i. If the Director of the Division of Taxation determines that the final report of the commission has not been produced and provided by June 30, 2004, the director shall suspend the alternative minimum assessment determined pursuant to section 7 of P.L.2002, c.40 (C.54:10A-5a) for all privilege periods commencing after December 31, 2004. If, as a recommendation of its final report, the commission recommends the termination of the alternative minimum assessment imposed pursuant to section 7 of P.L.2002, c.40 (C.54:10A-5a), the assessment shall not be imposed for privilege periods beginning on or after January 1, 2005.

C.52:9H-38 "Corporation Business Tax Excess Revenue Fund."

32. a. There is hereby created within the General Fund a restricted reserve fund to be known as the "Corporation Business Tax Excess Revenue Fund." The State Treasurer shall credit to the "Corporation Business Tax Excess Revenue Fund," on or before December 31 annually in 2003, 2004 and 2005, the amounts, if any, by which the State revenues derived from the corporation business tax in the prior fiscal year exceeded the target amount for that fiscal year; provided however, that if the total General Fund revenue for State Fiscal Year 2003 is less than the amount certified for that year, then the amount credited to the fund shall be reduced by that difference. Moneys credited to the "Corporation Business Tax Excess Revenue Fund" may be invested in the same manner as assets of the General Fund and any investment earnings on the

"Corporation Business Tax Excess Revenue Fund" shall accrue to the "Corporation Business Tax Excess Revenue Fund." For the purposes of section 3 of P.L.1990, c.44 (C.52:9H-16), amounts credited to the "Corporation Business Tax Excess Revenue Fund" shall not be included in the determination of funds deposited in the General Fund.

b. Balances in the "Corporation Business Tax Excess Revenue Fund" may be appropriated by the Legislature during State fiscal year 2004 or 2005 in the event that the revenue collections from the corporation business tax are less than the target amount for that fiscal year.

c. If balances remain in the Corporation Business Tax Excess Revenue Fund on December 30, 2005, the Director of the Division of Taxation shall adjust proportionately the tax rates in section 5 of P.L.1945, c.162 (C.54:10A-5) as it applies to privilege periods commencing during calendar year 2006 so as to reduce the expected revenue thereunder by an amount equal to the balance in the fund.

d. As used in this section, "target amount" means $1,823,000,000 for State fiscal year 2003, and for each State fiscal year thereafter means the target amount for the prior fiscal year multiplied by the weighted average rate of growth of the rate of growth of the State revenue collections pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. and the State revenue collections pursuant to the "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.), which weighted average rate of growth shall be measured by the amount of anticipated revenue from those two sources certified by the Governor upon approval of the annual appropriation act for the current fiscal year over both the amount of revenue from the "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.) actually deposited in the General Fund in the immediately-preceding fiscal year and the amount of revenue from the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., actually deposited in the Property Tax Relief Fund in the immediately-preceding fiscal year, as determined from the annual financial report of the State for the fiscal year immediately preceding.

33. This act shall take effect immediately and apply to privilege periods and taxable years beginning on or after January 1, 2002, provided however that section 27 shall apply to privilege periods ending after June 30, 1984.

Approved July 2, 2002.